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इस भाग में भिन्न पृष्ठ संख्या दो जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांचीधरक आदेश और अधिसंचालन
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than
the Ministry of Defence)

रिवर्स मंत्रालय

(राजस्व विभाग)

श्रादेश

नई दिल्ली, 20 नवम्बर, 1989

स्टाम्प

क्र. अ. 3127.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का का 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त विविधों का प्रयोग करते हुए केन्द्रीय सरकार एवं द्वारा उस शैक्ष की माफ करती है जो पवर काइट कंपनी द्वारा जारी किए जाने वाले केवल दो गो पवर काइट स्टॉप मूल्य के 9% (निःशुल्क) सुरक्षित विमोच्य पावर काइटों कंपनी द्वारा देणे वाले अणपत्रों (III श्रेणी) के रूप में विशेष स्वरूप के वंश-वर्वों द्वारा उन अधिनियम के अन्तर्गत प्रभाव है।

[गं. 61/89-स्टाम्प-फा सं. 33/65/89-विशी कर]

धी. के. स्वामीनाथन, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 20th November, 1989

STAMPS

S.O. 3127.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits the duty with which the bonds in the nature of described as 9 per cent (Tax free) secured redeemable Power Finance Corporation Bonds debentures (III series) of the value of rupees two hundred and fifty crores only to be issued by the Power Finance Corporation are chargeable under the said Act.

[No. 61/89/Stamps-F. No. 33/65/89-ST]
V. K. SWAMINATHAN, Under Secy.

वाणिज्य भवालय

(मुद्रा नियन्त्रक आयात-नियर्यात का कार्गोलय)

आदेश

नई दिल्ली, 29 नवम्बर, 1989

का.आ. 3133.—मैरमर केरल स्टेट इंजिनियरिंग कॉर्पोरेशन लि. को मुद्रा विदेशी मुद्रा के अंतर्गत जेनर बैंकिंग एड एसेमरिंग-850 नग के आयात के लिए 10,45,100 रुपये (बम लाख चौलालोंस हजार एक सौ रुपये भाव) के लिए एक आयात लाइसेंस सं. पी/सी/जी/2125204/सी/XX/13/एच/89, दिनांक 3-8-89 दिया गया था।

फर्म ने उपशक्त लाइसेंस की सीमांशुल्क प्रयोजन प्रति तथा विनियम नियंत्रण प्रति की अनुलिपि प्रति जारी करने के लिए इस आधार पर आवेदन किया है कि आइसेंस की मूल सीमांशुल्क प्रयोजन प्रति तथा विनियम नियंत्रण प्रति उनमें स्थो अधिकार गुम हो गई है। यांगे यह सी उल्लेख किया है कि लाइसेंस की सीमांशुल्क प्रयोजन प्रति तथा विनियम नियंत्रण प्रति किसी सीमांशुल्क प्राधिकारी के पास पर्याप्त नहीं थी इसलिए सीमांशुल्क प्रयोजन प्रति तथा विनियम नियंत्रण प्रति के मूल्य का विस्तृत भी उपयोग नहीं किया गया है।

2. अपने नक्क के समर्थन में लाइसेंसधारी ने नोटेरी प्रिलिक, नई दिल्ली के सनक विधिकार शास्त्र ऐकार्यक शास्त्र पत्र दाखिल किया है। तदनुसार मैं संतुष्ट हूँ कि आयात लाइसेंस सं. पी/सी/जी/2125204 दिनांक 3-8-89 की सीमांशुल्क प्रयोजन प्रति तथा विनियम नियंत्रण प्रति फर्म से स्थो अधिकार गुम हो गई है। 7-12-1955 के यथामंशोधित आयात (नियंत्रण) आदेश, 1955 के उपच्छेद 9(ग) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए मैरमर केरल स्टेट इंजिनियरिंग कॉर्पोरेशन लिमिटेड को जारी उक्त मूल सीमांशुल्क प्रयोजन प्रति तथा विनियम नियंत्रण प्रति सं. पी/सी/जी/2125204, दिनांक 3-8-89 को एतद्वारा दूर किया जाता है।

3. उक्त लाइसेंस की सीमांशुल्क प्रयोजन प्रति तथा विनियम नियंत्रण प्रति की अनुलिपि प्रति पार्टी को अलग से जारी की जा रही है।

[सं.सी.जी.-1/सी ई-1/89-90/4703]
मो.प्रार. भद्रार, उप मुद्रा नियन्त्रक, आयातनियर्यात

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports and Exports)

ORDER

New Delhi, the 29th November, 1989

S.O. 3133.—M/s. Kerala State Electronics Development Corporation Ltd. were granted an import licence No. P/CG/2125204/C/XX/13/H/89/CG.I/LS dated 3-8-89 for Rs. 10,45,100 (Rupees Ten Lakhs Forty Five Thousand and One Hundred) (£ 38,951) for import of Zener Barriers and Accessories-850 Nos. under Free Foreign Exchange.

The firm has applied for issue of Duplicate Copy of Customs Purposes Copy and Exchange Control Copy of the above mentioned licence on the ground that the original Customs Purposes Copy and Exchange Control Copy of the licence has been lost or misplaced. It has further been stated that the Customs Purposes Copy and Exchange Control Copy of the licence was not registered with any Customs Authority and as such the value of Customs Purposes Copy and Exchange Control Copy has not been utilised at all.

2. In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary Public, New Delhi. I am accordingly satisfied that the Original Customs Purposes Copy and Exchange Control

Copy of import licence No. P/CG/2125204 dated 3-8-89 has been lost or misplaced by the firm. In exercise of the powers conferred under sub-clause 9(cc) of the Import (Control) Order, 1955 dated 7-12-1955 as amended the said original Customs Purposes Copy and Exchange Control Copy No. P/CG/2125204 dated 3-8-89 issued to M/s. Kerala State Electronics Development Corporation Ltd., is hereby cancelled.

3. A duplicate Customs Purposes Copy and Exchange Control Copy of the said licence is being issued to the party separately.

[No. CG.I/CDE-1/89-90/4703]

B. R. AHIR, Dy. Chief Controller of Imports & Exports

नई दिल्ली, 4 विसम्बर, 1989

(स्वाक्षर नियंत्रण)

का.आ. 3134.—भारत सरकार ने रबड़ अधिनियम, 1947 (1947 का 24) की घारा 5 के साथ पठित घारा 4 की उपधारा (3) के उण्ड (ज) के अनुसरण में और तमिलनाडु सरकार के परामर्श में नियंत्रण विधियों का प्रतिनिधित्व करने के लिए श्री एम. हरिकृष्णन, आई.एफ.एस. को रबड़ बोर्ड का सदस्य होने के लिए नामनिर्देशित किया है।

अतः धब्ब, केन्द्रीय सरकार, रबड़ अधिनियम, 1947 (1947 का 24) की घारा 5 की उपधारा (2) के साथ पठित घारा 4 की उपधारा (3) के प्रावधानों के अनुसरण में भारत सरकार के वाणिज्य भवालय की अधिसूचना संघर्षा का.आ. 776(भ), तारीख 14 अगस्त, 1987 का नियमसिद्धित संगोष्ठन करती है, अर्थात् :-

उक्त अधिसूचना में, कम संख्याक 4 और उससे संबंधित प्रविहित के स्थान पर, नियमसिद्धित कम संख्या और प्रविहित रखी जाएगी, अर्थात्—

"4 श्री एम. हरिकृष्णन, आई.एफ.एस.,

अध्यक्ष-सह-प्रबन्ध निवेशक, प्ररसु रबड़ कार्पोरेशन लिमिटेड,
बदासेरी, पो.बा.नं. 75, नागर कायल, कन्याकुमारी जिला,
तमिलनाडु पिन कोड सं. 629001—सदस्य"

[का.सं. 12/1/86-प्लांट (ज)]
सी.ए. भास्करन, अवर सचिव

New Delhi, the 4th December, 1989

(RUBBER CONTROL)

S.O. 3134.—Whereas the Central Government in pursuance of clause (b) of sub-section (3) of section 4 read with sub-section (2) of section 5 of the Rubber Act, 1947 (24 of 1947), and in consultation with the Government of Tamilnadu have nominated Shri M. Harikrishnan, IFS to be a member of the Rubber Board to represent the State of Tamilnadu.

Now, therefore, in pursuance of the provisions of sub-section (3) of section 4 read with sub-section (2) of section 5 of the Rubber Act, 1947 (24 of 1947), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Commerce No. S.O. 776(E), dated the 14th August, 1987, namely:—

In the said notification, for serial number 4 and the entry relating thereto, the following serial number and entry shall be substituted, namely :—

"4. Shri M. Harikrishnan, I.F.S.,
Chairman-cum-Managing Director,
Arasu Rubber Corporation Limited,
Vadasery, P.B. No. 75 Nagercoil,

Kanyakumari District, Tamilnadu,
Pin Code No. 6290001. —Member".
[File No. 12/1/86-Plant 'B']
C. A. BHASKARAN, Under Secy.

इस्पात और खान मंत्रालय

(इस्पात किभाग)

नई बिल्डिंग, 6 नवम्बर, 1989

का. प्रा. 3135.—राजभाषा (मंत्र के शासकीय प्रयोजनों के लिए प्रयोग) विधायम, 1976 के विधायम -10 के उपधायम (4) के अनुग्रहण में केन्द्रीय सरकार एनडब्ल्यूएस टीवी आफ इंडिया पि. के अधीन निम्नलिखित कार्यालय को, जिनके 80% कर्मचारीवृद्धि ने हिन्दी कार्यालय साथी खान प्राप्त कर लिया है, अधिसूचित करती है :—

1. शाखा विकास कार्यालय, सखनऊ।

[म. ई. 11011(1)/88-हिन्दी]

नजीब जांग, निदेशक

MINISTRY OF STEEL AND MINES

(Department of Steel)

New Delhi, the 6th November, 1989

S.O. 3135.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office of Steel Authority of India Limited whereof 80 per cent staff have acquired working knowledge of Hindi:—

J. Branch Sales Office, Lucknow.

[No. E. 11011(1)/88-Hindi]

NAJEEB JUNG, Director

स्वास्थ्य और पीरकार कल्याण मंत्रालय

नई बिल्डिंग, 24 नवम्बर, 1989

का. प्रा. 3136:—केन्द्रीय सरकार ने, भारतीय मायूरिज्ञान परिषद विधिविधायम, 1956 (1956 का 102) की धारा 3 के उपधाया (1) के लिए (क) के अनुसूची में, और अरणालय प्रदेश गवर्नर भे परामर्श करके, डा० जॉ० एम० डेबनाथ, रवास्था मंत्रा, निदेशक, अरुणाचल प्रदेश को, इस अधिकूलता के निकाते जाने की तारीख से भारतीय मायूरिज्ञान परिषद का सदस्य नामिनीकृत किया है।

अतः, अब केन्द्रीय सरकार, उक्त अधिविधायम की धारा 3 की उपधाया (1) के उपबंधी के अनुसूची में, स्वास्थ्य मंत्रालय की अधिकूच्छा ० का. प्रा. 138 तारीख 9 जनवरी, 1960 में निम्नलिखित और अधिकूच्छा करती है, अर्थात् :—

उक्त अधिविधायम में “धारा 3(1)(क) के अधीन नामिनीकृत” शीर्ष के तत्काल कम संख्याकाल ३ और उससे सवधित प्रविष्टियों के पश्चात् निम्नलिखित कम संख्याकाल और प्रविष्टि अनुस्यागत की जाएगी, अर्थात् :—

“१ डा० जॉ० एम० डेबनाथ

स्वास्थ्य मंत्रा निदेशक

अरणालय प्रदेश, इटानगर,

[म. धी. 11013/15/88-एम०र्फ० (पा)]

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 24th November, 1989

S.O. 3136.—Whereas the Central Government in pursuance of clause (a) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), and in consultation with the Government of Arunachal Pradesh have nominated Dr. J. M. Debnath, Director of Health Services, Arunachal Pradesh, to be a member of the Indian Medical Council of India with effect from the date of issue of this Notification;

Now, therefore, in pursuance of the provisions of sub-section (1) of section 3 of the said Act, the Central Government hereby makes the following further amendment in the notification of the Ministry of Health No. S.O. 138 dated the 9th January, 1960, namely :—

In the said notification, under the heading “Nominated under section 3(1)(a)”, after serial number 23 and the entries relating thereto, the following serial number and entry shall be inserted, namely :—

“24. Dr. J. M. Debnath,
Director of Health Services,
Arunachal Pradesh, Itanagar.

[No. V. 11013/15/89-ME(P)]

का. प्रा. 3137.—केन्द्रीय सरकार, भारतीय मायूरिज्ञान परिषद विधिविधायम, 1956 (1956 का 102) की धारा 11 के उपधाया (2) द्वारा प्रदत्त शब्दियों का प्रयोग करने हुए भारतीय मायूरिज्ञान परिषद में परामर्श करने के पश्चात् उक्त अधिविधायम की पहली अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में “राजस्थान विश्वविद्यालय” शीर्षक के नीचे निम्नलिखित प्रविष्टियों अन्तःस्थापित की जाएंगी, अर्थात् :—

“डॉक्टर आफ मैर्डॉसिन (रेडियो डायग्नोसिस) एम डी (रेडियो डायग्नोसिस)”

[म. धी. 11015/34/89-एम. ई. (पा)]

S.O. 3137.—In exercise of the powers conferred by sub-section (2) of section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said schedule, under the heading “University of Rajasthan”, the following entities shall be inserted at the end, namely:—

“Doctor of Medicine (Radio-Diagnosis)

M.D. (Radio-diag.)”

[No. V. 11015/34/89-ME(P)]

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व गृह रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उनके लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों प्रशासनिक निकाय के निदेश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन जिसमें मूल बेतन महगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल है के 1/60वे भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बगते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महगाई भत्ता सहित पूरा बेतन अनुच्छेद 31 के तहत दिया गया हो था जिसके लिए अनुच्छेद 34 के तहत डिसपाइटमेंट मनी का भुगतान किया गया हो।

2. मद्रास गोदी श्रमिक (रोजगार का विनियमन) स्कीम, अनुच्छेद 32 के लिए निम्ननिवित अनुच्छेद प्रतिस्थापित किया जाएगा,
1956

अर्थात्—

“32 उपस्थिति भत्ता

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व गृह रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उनके लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था मासिक बेतन जिसमें मूल बेतन महगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल है, के 1/60 वे भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बगते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महगाई भत्ता सहित पूरा बेतन अनुच्छेद 30 के तहत दिया गया हो अथवा जिसके लिए अनुच्छेद 34 के तहत डिसपाइटमेंट मनी का भुगतान किया गया हो।

8. कोकीन गोदी श्रमिक (रोजगार का विनियमन) स्कीम, अनुच्छेद 32 के लिए निम्ननिवित अनुच्छेद प्रतिस्थापित किया जाएगा
1959

अर्थात्—

“32. उपस्थिति भत्ता

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व गृह रजिस्टर का श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई न हो, तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन, जिसमें मूल बेतन, महगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक कर दर और नगर प्रतिपूरक भत्ता शामिल हैं के 1/60वे भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बगते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महगाई भत्ता सहित पूरा बेतन अनुच्छेद 31 के तहत दिया गया हो अथवा जिसके लिए अनुच्छेद 34 के तहत डिसपाइटमेंट मनी का भुगतान किया गया हो।”

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4. विशाखापत्तनम् गोदी श्रमिक (गोजगार का विनियमन) अनुच्छेद 31 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा, अर्थात् :—

31 उपस्थिति भना

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पुल रजिस्टर का एक श्रमिक जो काम के लिए उपयोग है लेकिन उसके लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन जिसमें मूल बेतन महगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल हैं, के 1/60वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बताते हैं कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महगाई भत्ता सहित पूरा बेतन अनुच्छेद 30 के तहत दिया गया हो अथवा जिनके लिए अनुच्छेद 34 के तहत डिस्काइटमेंट मर्नी का भुगतान किया गया हो।

5. मुरगांव गोदी श्रमिक (गोजगार का विनियमन) स्कीम,
1965

अनुच्छेद 33 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा अर्थात् :—

“33 उपस्थिति भना

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पुल रजिस्टर का एक श्रमिक जो काम के लिए उपयोग है लेकिन उसके लिए कोई लाभ न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन, जिसमें मूल बेतन महगाई भत्ते मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल हैं, के 1/60 में भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बताते हैं कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महगाई भत्ता सहित पूरा बेतन अनुच्छेद 33 के तहत दिया गया हो। अथवा जिसके लिए अनुच्छेद 35 के तहत डिस्काइटमेंट मर्नी का भुगतान किया गया हो।”

6. काडला गोदी श्रमिक (गोजगार का विनियमन) स्कीम,
1969

अनुच्छेद 33 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा अर्थात् :—

“33 उपस्थिति भत्ता

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पुल रजिस्टर का एक श्रमिक जो काम के लिए उपयोग है लेकिन उन्हें लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन, जिसमें मूल बेतन, महगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल हैं, के 1/60वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महंगाई भत्ता सहित पूरा वेतन अनुच्छेद 32 के तहत दिया गया हो। अथवा जिसके लिए अनुच्छेद 35 के तहत डिमोपार्टमेंट मरी का भुगतान किया गया हो।”

7. कलकत्ता गोदी श्रमिक (रोजगार का विनियमन) स्कीम, 1970

अनुच्छेद 35 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा, अर्थात्:—

“35 उपस्थिति भत्ता

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पूल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था, मासिक वेतन जिसमें मूल वेतन, महंगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिष्ठान भत्ता शामिल है, के 1/60वें भाग का उपस्थिति भत्ते के स्वयं में भुगतान किया जाएगा।

बशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महंगाई भत्ता सहित पूरा वेतन अनुच्छेद 34 अथवा अनुच्छेद 36 के उप अनुच्छेद (2) के तहत दिया गया हो।”

8. मद्रास गैर पंजीकृत गोदी श्रमिक (रोजगार का विनियमन) स्कीम, 1957

अनुच्छेद 13ग के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा, अर्थात्:—

“13ग उपस्थिति भत्ता

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पूल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था मासिक वेतन जिसमें मूल वेतन, महंगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिष्ठान भत्ता शामिल है, के 1/60वें भाग का उपस्थिति भत्ते के स्वयं में भुगतान किया जाएगा।

बशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महंगाई भत्ता सहित पूरा वेतन अनुच्छेद 13ब के तहत दिया गया हो अथवा जिसके लिए अनुच्छेद 13घ के तहत डिमोपार्टमेंट मरी का भुगतान किया गया हो।”

9. विणाखापत्रम गैर पंजीकृत गोदी श्रमिक (रोजगार का विनियमन) स्कीम, 1968

अनुच्छेद 28 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा, अर्थात्:—

“28 उपस्थिति भत्ता

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पूल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह

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प्रशासनिक निकाय के निर्देश पर काम पर उपस्थित हुआ था और उसके लिए कोई काम नहीं था, मामिक बैठन जिसमें मूल वेतन, महाराई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपुरुक भत्ता शामिल हैं, के 1/60वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए अनुच्छेद 29 के तहत डिसेप्याइटमेंट मर्नी का भुगतान किया गया हो।"

10. बंबई चिपिंग एवं पेटिंग श्रमिक (रोजगार का विनियमन) अनुच्छेद 32 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा
स्कीम, 1969

अर्थात् :—

"32 उपस्थिति भत्ता

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पूल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलेंडर भर्हीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय में निर्देश पर काम पर उपस्थित हुआ था और उसके लिए कोई काम नहीं था, मामिक बैठन जिसमें मूल वेतन, महाराई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपुरुक भत्ता शामिल हैं, के 1/60वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महाराई भत्ता सहित पूरा वेतन अनुच्छेद 31 के तहत किया गया हो अथवा जिसके लिए अनुच्छेद 34 के तहत डिसेप्याइटमेंट मर्नी का भुगतान किया गया हो।"

11. कलकत्ता चिपिंग एवं पेटिंग श्रमिक
(रोजगार का विनियमन) स्कीम, 1970

अनुच्छेद 34 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा,
अर्थात् :—

"34 उपस्थिति भत्ता :

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पूल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलेंडर भर्हीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थिति हुआ था और उसके लिए कोई काम नहीं था, मामिक बैठन, जिसमें मूल वेतन, महाराई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपुरुक भत्ता शामिल हैं, के 1/60 में भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए अनुच्छेद 33 अथवा अनुच्छेद 35 के उप अनुच्छेद (2) के तहत महाराई भत्ते सहित पूर्ण वेतन का भुगतान किया गया हो।"

12. कलकत्ता गोदी लिपिकीय और सुपरवाइजरी श्रमिक
(रोजगार का विनियमन) स्कीम, 1970

अनुच्छेद 29 के लिए निम्नलिखित; अनुच्छेद प्रतिस्थापित किया जाएगा
अर्थात् :—

"29 उपस्थिति भत्ता :

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पूल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न

हो तो उसे कैलडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थित हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन, जिसमें मूल बेतन, मंहगाई भत्ते, मकान किराये भत्ते को पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल है, के 1/60वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बाशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महंगाई भत्ता सहित पूरा बेतन अनुच्छेद 28 के तहत दिया गया हो अथवा जिसके लिए अनुच्छेद 31 के तहत डिसएपाइटमेंट मर्नी का भुगतान किया गया हो।"

13. बम्बई ग्राहान्न हैंडलिंग श्रमिक
(रोजगार का विनियमन) स्कीम, 1975

अनुच्छेद 32 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा,
अर्थात् :—

"32. उपस्थिति भत्ता :

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पुल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थित हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन, जिसमें मूल बेतन, महंगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल है, के 1/60 वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बाशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए अनुच्छेद 31 अथवा अनुच्छेद 34 के तहत महंगाई भत्ते सहित पूर्ण बेतन का भुगतान किया गया हो।"

14. बम्बई गोदी विलयरिंग एवं फारविंग श्रमिक
(रोजगार का विनियमन) स्कीम, 1983

अनुच्छेद 31 के लिए निम्नलिखित अनुच्छेद प्राप्तिस्थापित किया जाएगा,
अर्थात् :—

"31 उपस्थिति भत्ता :

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पुल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थित हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन, जिसमें मूल बेतन, महंगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपूरक भत्ता शामिल है, के 1/60 वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बाशर्ते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए अनुच्छेद 30 अथवा अनुच्छेद 33 के तहत मंहगाई भत्ते सहित पूर्ण बेतन का भुगतान किया गया हो।"

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15. मद्रास गैर पंजीकृत गोदी किलमर्ग एवं फारवर्डिंग श्रमिक

(रोजगार का विनियमन) स्कीम, 1988

अनुच्छेद 29 के लिए निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा अर्थात् :—

“29. उपस्थिति भत्ता :

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पुल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थित हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन, जिसमें भूल बेतन, महगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपुरक भत्ता शामिल है, के 1/60 वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बगते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महगाई भत्ता सहित पूरा बेतन अनुच्छेद 28 के तहत दिया गया हो अथवा जिसके लिए अनुच्छेद 31 के तहत डिपाइटमेंट मनी का भुगतान किया गया हो ।”

16. मद्रास गैर पंजीकृत गोदी सामान्य पूल श्रमिक
(रोजगार का विनियमन) स्कीम, 1988

अनुच्छेद 33 के लिए, निम्नलिखित अनुच्छेद प्रतिस्थापित किया जाएगा, अर्थात् :—

33. उपस्थिति भत्ता :

स्कीम के अन्य प्रावधानों के अनुसार रिजर्व पुल रजिस्टर का एक श्रमिक जो काम के लिए उपलब्ध है लेकिन उसके लिए कोई काम न हो तो उसे कैलेंडर महीने के उन दिनों के लिए जिन दिनों वह प्रशासनिक निकाय के निर्देश पर काम पर उपस्थित हुआ था और उसके लिए कोई काम नहीं था, मासिक बेतन जिसमें भूल बेतन, महगाई भत्ते, मकान किराये भत्ते की पूरी दैनिक दर और नगर प्रतिपुरक भत्ता शामिल है, के 1/60वें भाग का उपस्थिति भत्ते के रूप में भुगतान किया जाएगा।

बगते कि ऐसे किसी दिन के लिए उपस्थिति भत्ता नहीं दिया जाएगा जिसके लिए महगाई भत्ता सहित पूरा बेतन अनुच्छेद 32 के तहत दिया गया हो अथवा जिसके लिए अनुच्छेद 35 के तहत डिपाइटमेंट मनी का भुगतान किया गया हो ।

[फाइल सं. एल बी-13013/11/88-एल-IV]

वी. एंकरलाइन, निवेशक

MINISTRY OF SURFACE TRANSPORT

(Labour Division)

New Delhi, the 27th November, 1989

S.O. 3139.—Whereas draft of a scheme to amend various Dock Workers (Regulation of Employment) Schemes specified in the Schedule annexed hereto was published, as required by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) with the notification of the Government of India in the Ministry of Surface Transport (Transport Wing) No.S.O. 920, dated the 20th March 1989 in the Gazette of India, Part II, Section 3 sub-section (ii), dated the 29th April 1989 inviting objections and suggestions from all persons likely to be affected thereby within a period of 45 days from

the date on which copies of the said notification as published in the Gazette of India made available to the public;

And whereas copies of the said Gazette were made available to the public on the 23rd May 1989;

And whereas objections and suggestions received from the public on the said draft have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the said Act, the Central Government hereby makes the following Scheme, namely :—

SCHEME

1. (1) This Scheme may be called the Dock Workers (Regulation of Employment) Amendment Scheme, 1989.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. The Dock Workers (Regulation of Employment) Schemes specified in column (2) of the Schedule hereto shall be amended, or as the case may be, further amended in the manner specified in column (3) thereof.

SCHEDULE

S.No.	Short title	Amendment
(1)	2	3
1.	The Bombay Dock Workers (Regulation of Employment) Scheme, 1956.	For clause 32, the following clause shall be substituted, namely :— “32. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days for which during a calendar month he attended for work as directed by the administrative body and no work was found for him : Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 31 or for which disappointment money is paid under clause 34.”;
2.	The Madras Dock Workers (Regulation of Employment) Scheme, 1956.	For clause 32, the following clause shall be substituted, namely :— “32. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory

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allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any-day for which full wages inclusive of dearness allowance, have been paid under clause 31 or for which disappointment money is paid under clause 34.”;

3. The Cochin Dock Workers (Regulation of Employment) Scheme, 1959

For clause 32, the following clause shall be substituted, namely :—

“32. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 31 or for which disappointment money is paid under clause 34.”

4. The Visakhapatnam Dock Workers (Regulation of Employment) Scheme, 1959.

For clause 31, the following clause shall be substituted, namely :—

“31. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 30 or for which disappointment money is paid under clause 34.”;

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5. The Mormugao Dock Workers (Regulation of Employment) Scheme, 1965.		<p>For clause 33, the following clause shall be substituted, namely :—</p> <p>“33. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body, and no work was found for him :</p> <p>Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 32 or for which disappointment money is paid under clause 35.”.</p>
6. The Kandla Dock Workers (Regulation of Employment) Scheme, 1969.		<p>For clause 33, the following clause shall be substituted, namely :—</p> <p>“33. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :</p> <p>Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 32 or for which disappointment money is paid under clause 35.”;</p>
7. The Calcutta Dock Workers (Regulation of Employment) Scheme, 1970.		<p>For clause 35, the following clause shall be substituted, namely :—</p> <p>“35. Attendance allowance : Subject to other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :</p>

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8. The Madras Unregistered Dock Workers (Regulation of Employment) Scheme, 1957.

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under 34 or under sub-clause (2) or clause 36.”;

For clause 13C, the following clause shall be substituted, namely :—

“13. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 13B or for which disappointment money is paid under clause 13C.”;

9. The Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968.

For clause 28, the following clause shall be substituted, namely :—

“28. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which disappointment money is paid under clause 29.”;

10. The Bombay Chipping and Painting workers (Regulation of Employment) Scheme, 1969.

For clause 32, the following clause shall be substituted, namely :—

“32. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar

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month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 31 or for which disappointment money is paid under clause 34.”;

11. The Calcutta Chipping and Painting Workers (Regulation of Employment) Scheme, 1970

For clause 34, the following clause shall be substituted, namely :—

“34. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance have been paid under clause 33 or under sub-clause (2) of Clause 35.”;

12. The Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme, 1970

For clause 29, the following clause shall be substituted, namely :—

“29. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 28 or for which disappointment money is paid under clause 31.”;

13. The Bombay Foodgrain Handling Workers (Regulation of Employment) Scheme, 1975.

For clause 32, the following clause shall be substituted, namely :—

“32. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him : Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 31 or under clause 34”;

14. The Bombay Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1983.

For clause 31, the following clause shall be substituted, namely :—

“31. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 30 or under clause 33.”;

15. The Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988.

For clause 29, the following clause shall be substituted, namely :—

“29. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full wages, inclusive of dearness allowance, have been paid under clause 28 or for which disappointment money is paid under clause 31.”;

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16. The Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme, 1988.

For clause 33, the following clause shall be substituted, namely :—

“33. Attendance allowance : Subject to the other provisions of the Scheme, a worker on the reserve pool register who is available for work but for whom no work is found shall be paid as attendance allowance 1/60th of the monthly wage comprising basic pay and dearness allowances and full daily rate of house rent allowance and city compensatory allowance for the days on which during a calendar month he attended for work as directed by the Administrative Body and no work was found for him :

Provided that no attendance allowance shall be payable for any day for which full daily wages, inclusive of dearness allowance, have been paid under clause 32, or for which disappointment money is paid under clause 35.”

[File No. LB-13013/11/88-L.IV.]

V. SANKARALINGAM, Director.

नागर विमानतं भीर पर्यटन मंत्रालय

नई दिल्ली, 28 नवम्बर, 1989

का० शा० 3140.—पवन हंस लिमिटेड के संस्था आपन भीर अंतर्राष्ट्रीयों के अनुच्छेद 40 द्वारा प्रदत्त व्यक्तियों का प्रयोग करते हुए, राष्ट्रपति विंग कमान्डर क० क० सेनी को 4000-5000 रु के शेष्पूल “थ” वेतनमात्र में पवन हंस लिमिटेड के प्रबंध-निदेशक के पद पर नियुक्ति को 26-10-89 से 31-12-89 तक या जब तक उनके उत्तराधिकारी की नियुक्ति नहीं हो जाती हनमें जो भी पहसु हो, आगे बढ़ाते हैं।

[सं० ए०शी० 13015/42/89-ए सी (वी.एल.)]
आर० एन० वास, उप सचिव

MINISTRY OF CIVIL AVIATION AND TOURISM

New Delhi, the 28th November, 1989

S.O. 3140.—In exercise of the powers conferred by Article 40 of the Memorandum and Articles of Association of the Pawan Hans Limited, the President is pleased to extend the appointment of Wing Commander K. K. Saini as Managing Director of Pawan Hans Limited in Schedule 'B' scale of pay of Rs. 4000—5000 for a further period from 26-10-89 to 31-12-89 or till his successor is appointed, whichever is earlier.

[No. AV. 13015/42/89-AC(VL)]
R. N. DASH, Dy. Secy.

भारत संसाधन विकास मंत्रालय

(संस्कृति विभाग)

नई दिल्ली, 24 नवम्बर, 1989

का० शा० 3141.—चलचित्र भ्रष्टनियम 1952 (1952 का 37) की शा० 5(1) तथा चलचित्र (प्रमाणन) विधावासी, 1983 के

नियम 8 के उपनियम (1) भीर (2) के साथ पठित नियम 7 के उप नियम (3) द्वारा प्रदत्त व्यक्तियों का प्रयोग करते हुए केंद्रीय सरकार निम्नलिखित व्यक्तियों को केंद्रीय फिल्म बोर्ड, बंगलोर के केंद्रीय सलाहकार पैनल के सदस्य के रूप में तत्काल से घोग्ने आवेदन तक के लिए नियुक्त करती है :

1. श्री हरि कृष्ण
2. श्री एम० एन० रमेश

[मं० 814/2/88-फ०प्र०]

मनमोहन सिंह, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Culture)

New Delhi, the 24th November, 1989

S.O. 3141.—In exercise of the powers conferred by Section 5(1) of the Cinematograph Act, 1952 (37 of 1952) and sub-rule (3) of Rule 7 read with sub-rule (1) and (2) of Rule 8 of the Cinematograph (Certification) Rules, 1983, the Central Government hereby appoints the following persons as members of the Regional Advisory Panel of the Central Board of Film Certification, at Bangalore, with immediate effect and until further orders :—

1. Shri Hari Krishna
2. Shri M. N. Ramesh

[No. 814/2/88-FC]
MAN MOHAN SINGH, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 24 नवम्बर, 1989

का.प्रा. 3142.—यतः पेट्रोलियम और खनिज पाइपलाइन भूमि में उपयोग के अधिकार का अर्जन अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.प्रा.सं. 1597 तारीख 15-7-89 द्वारा केन्द्रीय सरकार ने उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पाइपलाइनों का बिछाने के लिए अंजित करने का अपना आशय घोषित कर दिया था।

और यतः सक्रम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट दें रहा है।

और आरो, यतः केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अंजित करने का विनिश्चय किया है।

अब, यतः उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार निर्वेश देते हैं कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की वजाय तेल और प्राकृतिक गैस आयोग में, मधी बाधाओं से मुक्त रूप में, बोरणा के प्रकाशन की इस तारीख को निहित होगा।

और आरो उम धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्वेश देते हैं कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की वजाय तेल और प्राकृतिक गैस आयोग में, मधी बाधाओं से मुक्त रूप में, बोरणा के प्रकाशन की इस तारीख को निहित होगा।

अनुसूची

इलाप-2 से एस डब्ल्यू एम बी तक पाइप लाइन के लिए।

गांव	आक नं.	हेक्टर	भार.	सेस्टीयर
बालनेर	161	0	05	33
	163	0	16	71
	167/ए	0	01	32
	166	0	28	84
	178	0	23	08
	180	0	01	18
	179	0	04	39
	240/ए-बी	0	22	39
	289	0	01	14
	283	0	18	59
	293/ए-बी	0	13	78
	296/ए-बी	0	00	96
	298	0	05	85
	कार्ट देक	0	03	25
	297 ए-बी	0	02	47
	308	0	01	30
	579	0	47	97
	242	0	04	55
	241	0	09	63
	285	0	09	75
	287	0	05	67
	582	0	05	45
	275	0	03	19
	242	0	04	55
	241	0	09	62
	285	0	09	75
	287	0	06	67
	582	0	05	45
	295	0	08	19

[सं. नं. 11027/54/89 भो एन जी बी-III]

MINISTRY OF PETROLEUM & NATURAL GAS

New Delhi, the 24th November, 1989

S.O. 3142.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 1597 dated 15-7-89 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the schedule appended to this notification;

Now, therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil and Natural Gas Commission free from encumbrances.

SCHEDULE

PIPELINE FROM ELLAV-2 TO SWMB.

State : Gujarat		District : Bharuch		Taluka : Hansot	
Village	Block No.	Hectare	Acre	Centi-are	
WALNER	161	0	05	33	
	163	0	16	71	
	167/A	0	01	32	
	166	0	28	84	
	178	0	23	03	
	180	0	01	13	
	179	0	04	39	
	240/A-B	0	22	39	
	289	0	01	14	
	283	0	18	59	
	293/A-B	0	13	78	
	296/A-B	0	00	96	
	298	0	05	85	
	Cart track	0	03	25	
	279/A-B	0	02	47	
	308	0	01	30	
	579	0	47	97	
	242	0	04	55	
	241	0	09	63	
	285	0	09	75	
	287	0	05	67	
	582	0	05	45	
	275	0	03	19	

[N]. O. 11027/54/89-ONG D.III]

का.प्रा. 3143.—यतः पेट्रोलियम और खनिज पाइपलाइन भूमि के उपयोग के अधिकार का अर्जन अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.प्रा.सं. 1284

नारीश्व 2-5-89 द्वारा केन्द्रीय सरकार ने उस प्रधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पाइपलाइनों को बिछाने के लिए अर्जित करने का अपना आवाय घोषित कर दिया था।

और यह यह: सदाम प्राधिकारी ने उक्त प्रधिनियम की धारा 6 की उपथारा (1) के अधीन सरकार को रिपोर्ट दें दी है।

और यह, यह: केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस प्रधिसूचना से संलग्न अनुसूचि में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अब, यह: उक्त प्रधिनियम की धारा 6 की उपथारा (1) द्वारा प्रदत्त अधिकार का प्रयोग करते हुए केन्द्रीय सरकार एन्डडायर घोषित करता है कि इस प्रधिसूचना में संलग्न अनुसूचि में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाइपलाइन बिछाने के लिए एन्डडायर अर्जित किया जाता है।

और यहां उस धारा की उपथारा (4) द्वारा प्रदत्त शाखियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देता है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की वजाय तेल और प्राकृतिक गैस आयोग में, सभी आवासों से मुक्त रूप में, घोपणा के प्रकाशन की इस नारीश्व को निहित होगा।

अनुसूची

कूप नं. 29 से कूप नं. 15 में डबका झो.सो.एम. तक पाइप लाइन बिछाने के लिए।

राज्य : गुजरात जिला : बडोदा

तालुका : पादरा

गांव	सर्वे नं.	हेक्टेयर	प्रार.	मेन्टोयर
कोमा	1464	0	10	20
	1471/3	0	07	50
	1471/41 पी	0	07	50
	1471/41 पी	0	07	20
	1471/1	0	08	55
	1519	0	03	00
बेस्ट लैंड	0	06	00	
	54	0	03	30
	55	0	12	90
	58/3	0	04	95
	57	0	09	00
	58/1	0	06	15
	65/2	0	06	30
	65/1	0	08	55
	66	0	00	65
	64/3	0	03	35
	64/1	0	00	80
	63/1	0	00	70
कास	0	03	30	
	74	0	04	50
	75	0	12	45
	76 1/प	0	05	70
फार्ट ट्रेक	0	01	50	

[सं. नं. 11027/50/89/गो एन डी शी III]

S.O. 3143.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 1284 dated 2-5-89 under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the lands in the schedule appended to this notification;

Now, therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil and Natural Gas Commission free from encumbrances.

SCHEDULE PIPELINE FROM WELL NO. 29 to WELL NO. 15 DABKA GC\$.

State : Gujarat District: Baroda Taluka : PADRA

Village	Survey No.	Hectare	Arc	Centi-arc
MOBHA	1464	0	10	20
	1471/3	0	00	50
	1471/41P	0	07	50
	1471/41P	0	07	20
	1471/1	0	03	55
	1519	0	03	00
Waste land	0	00	06	00
	54	0	03	30
	55	0	12	90
	58/3	0	01	95
	57	0	09	00
	58/1	0	06	15
	65/2	0	06	30
	65/1	0	03	55
	66	0	01	65
	64/3	0	10	35
	64/1	0	13	80
	63/1	0	08	70
Kans	0	00	03	30
	74	0	04	50
	75	0	12	45
	76/1/A	0	05	70
Cart track	0	00	01	50

[No. O-11020/50/89-ONGD.III]

का. आ. 3144:—यह: पेट्रोलियम और लिंज पाइपलाइन भूमि में उपयोग के अधिकार का प्रार्जन प्रधिनियम, 1962 (1962 का 50) की धारा 3 की उपथारा (1) के प्रधीन भारत सरकार पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का. आ. म. 874 नारीश्व 28-4-89 द्वारा केन्द्रीय सरकार ने उस प्रधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट इसी में उपयोग के अधिकार को पाइपलाइनों को बिछाने के लिए प्रार्जित का अपना आवाय घोषित कर दिया था।

श्रीराम सभान प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट दे दी है।

और आगे यह केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से संबंध अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अब, अबतः उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रवर्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा घोषित करती है कि इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पालपलाइन बिछाने के प्रयोजन के लिए एतद्वारा अर्जित किया जाता है।

और आगे उम धारा की उपधारा (4) द्वारा प्रवर्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय तेल और प्राकृतिक गैस आयोग में, सभी बाधाओं से मुक्त रूप में, धोषणा के प्रकाशन की इस तारीख को निहित होगा।

अनुसूची

मरोना जी. जी. एम.-1 से ज़रूर निन्दु तक पाल्य लाइन बिछाने के लिए।

राज्य - गुजरात जिला - मेहसाना तालुका - कड़ी

गांव	सर्वे नं.	ट्रैक्टर	आर.	सेन्ट्रीयर
बावलु	1146	0	07	00

[सं. श्रो. 11027/21/89-ओ एन जी शी-III]

S.O. 3144.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 874 dated 28-3-89 under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the lands in the schedule appended to this notification;

Now, therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the declaration in the Oil and Natural Gas Corporation free from encumbrances.

SCHEDULE

PIPELINE FROM ZAROLA GGS I TO JN POINT

State : Gujarat Dist Mehsana Taluka : Kadi

Village	Survey no.	H. acre	Arc	Cent-	arc
BAVLU	1146	0	07	00	

[No. O-11027/21/89-ONG D-III]

का. श्रो. 3145--यह पेट्रोलियम और बनिज पालपलाइन भूमि में उपयोग के अधिकार का अर्जन अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम और प्राकृतिक गैस संचालन की अधिसूचना का. श्रो. सं. 133 तारीख 5-1-89 द्वारा केन्द्रीय सरकार ने उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पालपलाइनों को बिछाने के लिए अर्जित करने का अपना आशय घोषित कर दिया था।

और यह: मध्यम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट दे दी है।

और आगे, यह केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करते के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अब, अबतः उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रवर्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा घोषित करती है कि इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पालपलाइन बिछाने के लिए एतद्वारा अर्जित किया जाता है।

और आगे उम धारा की उपधारा (4) द्वारा प्रवर्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय तेल और प्राकृतिक गैस आयोग में, सभी बाधाओं से मुक्त रूप में, धोषणा के प्रकाशन की इस तारीख को निहित होगा।

अनुसूची

ईपी एम नदामन से एन. के. सो. टी. एम तक पाल्य लाइन बिछाने के लिए।

राज्य - गुजरात जिला- मेहसाना तालुका - कड़ी

गांव	सर्वे नं.	ट्रैक्टर	आर.	सेन्ट्रीयर
1	2	3	4	5
राणेशपुरा	199	0	08	00
	198	0	07	40
	197	0	11	20
	196	0	07	20
कार्ट ट्रैक	0	01	60	
184/2	0	13	20	
185	0	10	60	
183	0	13	00	
186	0	03	40	
179	0	27	80	

1	2	3	4	5
	180	0	10	20
कार्ट ट्रैक	0	02	40	
156	0	08	60	
155	0	28	32	
154/2	0	15	60	
कार्ट ट्रैक	0	01	20	
130/1	0	16	60	
130/2	0	12	00	
133	0	00	20	
131	0	18	60	
124	0	25	60	
कार्ट ट्रैक	0	01	20	
117	0	24	50	
116	0	14	50	
115	0	01	50	
कार्ट ट्रैक	0	01	40	
87	0	16	40	
90	0	17	40	
91/2	0	39	00	
92	0	28	00	
95	0	01	12	
96	0	33	70	
103	0	05	00	
कार्ट ट्रैक	0	01	60	
102	0	19	40	
101	0	14	80	
कार्ट ट्रैक	0	05	00	

[सं. घो. 11027/2/89-ग्रो.एन जी डी-III]

S.O. 3145.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 133 dated 5-1-89 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the schedule appended to this notification;

Now, therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil and Natural Gas Commission free from encumbrances.

SCHEDULE

PIPELINE FROM EPS NANDASAN TONK CTF

State : Gujarat	District : Mehsana	Taluka : Kadi	Village	Survey No.	HectaMe	Are	Centi ar.	1	2	3	4	5
			GANESH	199	0	08	00					
			PURA	198	0	07	40					
				197	0	11	20					
				196	0	07	20					
			Cart track	0		01	60					
				184/2	0	13	20					
				185	0	10	60					
				183	0	13	00					
				186	0	03	40					
				179	0	27	80					
				180	0	10	20					
			Cart track	0		02	40					
				156	0	07	60					
				155	0	28	32					
				154/2	0	15	60					
			Cart track	0		01	20					
				130/1	0	16	60					
				130/2	0	12	00					
				133	0	00	20					
				131	0	18	60					
			Cart track	0		25	60					
				124	0	01	20					
				117	0	24	50					
			Cart track	0		14	50					
				116	0	01	50					
			Cart track	0		01	40					
				87	0	16	40					
				90	0	17	40					
				91/2	0	39	00					
			Cart track	0		28	00					
				92	0	01	12					
				95	0	33	70					
			Cart track	0		05	00					
				96	0	01	60					
			Cart track	0		17	40					
				103	0	14	80					
			Cart track	0		05	00					
				102	0	01	20					
			Cart track	0		14	50					
				101	0	05	00					
			Cart track	0		05	00					

[N. O-11027/2/89-ONG D. III]

S.O. 3146.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि सोक-हित में यथा आवश्यक है कि गुजरात राज्य में बलोल- 6 से बलोल- 4 तक पेट्रोलियम के परिवहन के लिए पाइपलाइन लेत तथा प्राकृतिक गैस आयोग द्वारा बिलाई जानी चाहिए।

ओर यतः यह प्रतीत होता है कि ऐसी लाइनों को बिलाने के प्रयोग के लिए एतदायाम अनुसूची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

प्रत. यथा पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए केन्द्रीय सरकार ने उसमें उपयोग का अधिकार अर्जित करने का शपथा आशय एवं घोषित किया है।

બસર્તે કિ ઉક્સ ભૂમિ મેં હિતવઢ વ્યક્તિ, ઉમ ભૂમિ કે નોંચ પાછા લાલાને કે લિએ ધ્રાક્ષેપ સામ્રાજ્ય પ્રાધિકારી તેલ મથ્ય પ્રાચ્છનિક ગેમ આયોગ, નિર્માણ ઓર દેખાવાલ પ્રસાગ, સકાળપુરગ રોઝ, ભાડોદા ૩ કો હણ પ્રથમસૂચના કી લારીએ સે 21 દિનોને કે રહીતર કર મંકના।

ફ્રોર એસા આભેપ કરતે બાના હર ઠાકિત વિનિવિષ્ટત યહ ભી કથન કરેગો કિ કથા યહ બહુ ચાહુલા હૈ કિ ઉગર્ફી મુખ્યમાર્દ વ્યક્તિનાની રૂપ રૂપ હો યા કિમી વિધિ વ્યવસારી કી માર્ફતન।

ઘનશૂચની!

બલોલ- 6 સે બલોલ- 4 ના પાઈપ લાઇન વિશ્લેષને કે લિયા।

રાજ્ય-ગુજરાત જિલ્લા ઓર સાતક - ગર્દામાણગા

ગંધી	સર્વેગ	ટેક્ટર	આર	મેન્ટ.
1	2	3	4	5
બલોલ	1769	0	01	65
	1770	0	10	35
1771/પી	0	10	80	
1772/2	0	06	45	
1772/1	0	03	30	
1648	0	21	00	
1647	0	06	45	
1646	0	06	00	
1645/1	0	17	40	
1643/2	0	00	40	
1644	0	10	20	
કાર્ટ ટ્રેક	0	00	75	
1678	0	11	70	
કાર્ટ ટ્રેક	0	00	75	
1394	0	17	55	
1393/2	5	09	60	
1393/1	0	10	95	
1392	0	00	95	
1386/2	5	11	10	
1385	0	10	35	
1380	0	11	10	
1379	0	18	15	
1326	0	07	95	
1325	0	00	90	
1300	0	20	70	
1303/2	0	01	50	
1302	0	10	65	
કાર્ટ ટ્રેક	0	01	65	
1287	0	12	15	
કાર્ટ ટ્રેક	0	00	60	
1286	0	05	55	
1280	0	08	25	
1281	0	04	50	
1279	0	13	05	
1277	0	14	70	
796	0	13	50	
797	0	09	00	
793/1	0	10	65	
788	0	14	85	
786	0	01	80	

S.O. 3146.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Balol-6 to Balol-4 in Gujarat State pipeline should be laid by the Oil and Natural Gas Commission.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire that right of user in the land described in the schedule annexed hereto:—

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the land), Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Provided that any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Oil and Natural Gas Commission, Construction and Maintenance Division, Makarpura, Vadodara. (390009).

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

SCHEDULE
PIPELINE FROM BALOL-6 TO BALOL-4
State : Gujarat District & Taluka : Mehsana

Village	Survey No.	Hectare	Arc	Conti are
Balol	1769	0	01	65
	1770	0	10	35
1771/P	0		10	80
1772/2	0		06	45
1772/1	0		03	30
1648	0		21	00
1647	0		06	45
1646	0		06	00
1645/1	0		17	40
1643/2	0		00	40
1644	0		10	20
Cart track	0		00	75
1678	0		11	70
Cart trach	0		00	75
1394	0		17	55
1393/2	0		09	60
1393/1	0		10	95
1392	0		00	95
1386/2	0		11	10
1385	0		10	35
1380	0		11	10
1379	0		18	15
1326	0		07	95
1325	0		00	90
1300	0		20	70
1303/2	0		01	50
1302	0		10	65
Cart trach	0		01	65
1287	0		12	15
Cart trach	0		00	60
1286	0		05	55
1280	0		08	25
1281	0		04	50
1279	0		13	05
1277	0		14	70
796	0		13	50
797	0		09	00
793/1	0		10	65
788	0		14	85
786	0		01	80

का. आ. 3147.—नि वेदितान और योग्य पाइपलाइन भूमि में उपयोग के अधिकार का अर्जन अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के वेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का. आ. सं. 1593 तारीख 15-7-89 द्वारा केन्द्रीय सरकार ने उस अधिसूचना से सलग अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पाइपलाइनों को बिछाने के लिए अर्जित करने का अपना आशय घोषित कर दिया था।

और यह: सभी प्राधिकारी ने उस अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट देंदी है।

और यह, यह: केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से सलग अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनियम किया है।

अब, यह: उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रवर्त्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एवं द्वारा घोषित करती है कि इस अधिसूचना में सलग अनुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाइप लाइन बिछाने के लिए एटद्वारा अर्जित किया जाता है।

और यहां उस धारा की उपधारा (4) द्वारा प्रवर्त्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निम्न देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निश्चित रूप से वजाय तेल और प्राकृतिक गैस प्रयोग में, सभी यात्राओं से मुक्त रूप से, धोषणा के प्रकारण की इन सारोंको निहित होता।
अनुसूची

गंधार से धुकान तक पाइप लाइन बिछाने के लिए

राज्य गुजरात	जिला : खेडा	तालुका : बोरसंद			
गांव	सर्वे नं.	हेक्टेयर	आर.	सेन्टीयर	
सोरवा	178	0	38	69	
	179 1 और 2	0	18	55	
	181	0	00	60	

[सं. आ. 11027/32/89-ओ एन जी ची III]
के, विवेकनाथ, डेस्क अधिकारी

S.O. 3147.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 1593 dated 15-7-89 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the lands in the schedule appended to this notification;

Now, therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central

Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil and Natural Gas Commission free from encumbrances.

SCHEDULE

Pipeline from Gandhar to Dhuvaran

State : Gujarat Distt : Kheda Taluka : Borsad

Village	Survey No.	Hectare	Are	Centi-are
GORVA	178	0	38	69
	179/1 & 2	0	18	55
	181	0	00	60

[No.O-11027/32/89 ONGDIII]
K. VIVEKANAND, Desk Officer

नई दिल्ली, 27 नवम्बर, 1989

का. आ. 3148—सरकारी स्थान (प्राधिकृत प्रधिक्षियों की वेद्यता) अधिनियम 1971 (1971 का 40) की धारा 3 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एवं द्वारा घोषित केन्द्रीय सरकार, वेट्रोलियम और प्राकृतिक गैस मंत्रालय की 12 दिसम्बर, 1986 की अधिसूचना का. आ. 4258 में निम्नलिखित संशोधन करती है, अर्थात्—

उक्त अधिसूचना की सारणी (2) में क्रम संख्या 4 के सामने वर्तमान प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियों प्रतिस्थापित की जाएंगी, अर्थात्—

“सुवनेश्वर, जोधपुर में आयल इंडिया लिमिटेड के परियोजना कार्यालयों में परियोजना प्रबन्धक उप प्रशासनिक प्रबन्धक तथा कलकता स्थित परियोजना कार्यालय में आशा प्रबन्धक”।

[संख्या आ. -20011/20/89/ओ-एन जी ची-4]
गुरुदयाल सिंह, डेस्क अधिकारी

New Delhi, the 27th November, 1989

S.O. 3148.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby amends the notification S.O. 4258 dated the 12th December, 1986, of the Government of India, in the Ministry of Petroleum and Natural Gas, as follows, namely :—

In the Table of the said notification in column (2) against serial No. 4, for the existing entries, the following entries shall be substituted, namely :—

“Project Manager, Deputy Administrative Manager in the project offices of the Oil India Limited at Bhubaneswar, at Jodhpur and Branch Manager in the project office at Calcutta”.

[No. O-20011/20/89-ONG.D4]
GURDIAL SINGH, Desk Officer

श्रम संत्रालय

नई दिल्ली, 17 नवम्बर, 1989

का. आ. 3149 :—ब्रौदीगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोचिंग स्टीमर एजेन्सट्स एसोशिएशन, कोचिंग पोर्ट, कोचिंग के प्रबन्धनतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट ब्रौदीगिक विवाद में ब्रौदीगिक अधिकारण, अलपापी के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16 नवम्बर, 1989 को प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 17th November, 1989

S.O. 3149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Alleppey as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Cochin Steamer Agents Association, Cochin Port, Cochin and their workmen, which was received by the Central Government on 16-11-89.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL ALLEPPEY

(Dated this the 16th day of October, 1989)

I. D. No. 62/1989

BETWEEN

- (1) The Chairman, Governing body, Cochin Steamer Watchmen Scheme, Cochin Steamer Agents Association, Cochin-682001.
- (2) The Chairman, Cochin Port Trust, Cochin-682003.

AND

Sri P. A. Mohammed Kunju, Padickal House, Cochin-682001 and 31 others.

Representations :—

By Sri B. S. Krishnan, Advocate Ernakulam—For Management No. 1.

By M/s. Menon & Pal Advocates, Cochin-11—For Management No. 2.

By M/s. A. X. Varghese, T. P. Madhusoodanan and T.P. Manilal, Advocates, Ernakulam For—Workmen.

AWARD

This is an industrial dispute referred by the Government of India under Section 10(d) of the Industrial Dispute Act. The issue referred for adjudication by order dated 9-3-1989 reads as follows :—

"Whether the demand of Sri P. A. Mohammed Kunju and 31 others Steamer Watchmen who were employed at Cochin Port through the Cochin Steamer Agents Association (Cochin Steamer Watchmen's Scheme), Cochin regarding the payment of overtime arrears, gratuity and retrenchment compensation is justified. If so, what relief are the workmen concerned entitled to?"

2. In response to notice from this Tribunal, only 16 out of 32 workmen who are stated to be concerned in the dispute entered appearance through counsel. It appears that the remaining 16 workmen might have either lost interest in prosecuting the matter or do not have any dispute now. The 3466GI/89—4

names of none of the workmen except one are available from the reference order.

3. All the parties concerned filed statements before this Tribunal. Although payment of overtime allowance, gratuity and retrenchment compensation are matters on which adjudication is sought, it has come out from one of the workmen who had tendered evidence before this court that nothing is due to any of the workers as overtime allowance. Therefore, on that issue, it cannot be said that there is dispute. The entitlement for gratuity is a matter governed by Payment of Gratuity Act, 1972. If anything is due to these workmen as gratuity, they will have to approach competent authority prescribed in the Payment of Gratuity Act. Therefore in sum and substance, the only issue remaining is on the retrenchment compensation to which these 16 workers are entitled.

4. Admittedly the workmen concerned in the dispute were under services of the Cochin Steamer Agents Association and all of them retired on superannuation with effect from 15-7-1987. That retirement, according to the management, was on the specific understanding reached between the Cochin Port Steamer Association and the various labour unions in the Port Trust representing the workmen concerned in this dispute. About 171 Steamer Watchmen were working in the Cochin Port Trust and they were working under different Steamer Watchmen contractors till 1983. Since there were so many contractors and so many Watchmen under each of them, the chance for getting equitable opportunity to all watchmen was rare. Therefore in order to give equitable distribution of work, Steamer Workmen Contractors formed an Association by framing a scheme namely Cochin Steamer Watchmen Scheme. As per the scheme, there is a governing body and a Chairman for the administration. Thus all the steamer watchmen who were on the list of Assistant Labour Commissioner (Central), Ernakulam (the list prepared in pursuance of the memorandum of settlement dated 10-5-1973) were eligible to be covered under the scheme.

5. All the workmen concerned herein were qualified to become members of the scheme which was finalised in terms of a conciliation settlement (Ext. M1 (b) signed on 18-3-1983 in the presence of Assistant Labour Commissioner (Central). In that conciliation settlement representing all the Steamer Watchmen, five unions had signed. The object of the scheme it is stated, is to effect regulation of employment to Steamer Watchmen on the basis of rotational booking and to ensure efficiency in performance of watch and ward duty on board vessels. After the formation of the scheme, the unions representing the watchmen submitted a list of persons who were to be enrolled under the scheme before the Assistant Labour Commissioner (Central), Ernakulam. Thus all the watchmen who were working in the Port Trust as Steamer Watchmen and who possessed photo identity cards issued by the Labour Enforcement Officer (Central), Ernakulam were turned out to be employees covered under the scheme. Admittedly the workmen concerned in this dispute were covered under the scheme.

6. After the signing of Ext. M1 (b) scheme, through another conciliation settlement some of the provisions in the scheme were either modified or amended. As a new clause, the following provision was also incorporated by conciliation settlement dated 9-11-1983. Ext. M1(c) is the settlement making modifications. One of the clauses reads as follows :—

"The rights and responsibilities envisaged in the scheme will be only prospective from the date of starting of rotational booking of the Steamer Watchmen".

7. In the above conciliation settlement also, all the Steamer Watchmen Contractors and the unions representing the workmen had signed. Subsequently by Ext. M1(d), decision taken by the Steamer Agents' Association and various trade unions, it was decided to refer the question of compensation in respect of the past services of the members of the scheme to arbitration by the Chairman, Cochin Port Trust. Pursuant to that decision, on 7-5-1984, the then Chairman of the Cochin Port Trust Mr. D. Babu Paul had given an award. That award is Ext. M1(c). It was awarded therein that to those workers with service upto 5 years and below should be given lump sum compensation of Rs. 500, to those who had

service between 5 years and 10 years should be given consolidated sum of Rs. 750 and to those who had more than 10 years service prior to 1983 should be given a consolidated sum of Rs. 1000.

8. I shall extract here under the award of Cochin Port Trust Chairman.

"With reference to the question of compensation for past services of the members of the pool, it was agreed by both sides that both sides will abide by the award to be given by the Chairman, Cochin Port Trust in this matter and that there will be no recourse to direct action on this account. No claim on this score will be raised directly with any Steamer Agent by any Steamer Watchmen Union. Accordingly all the four unions presented claims. Steamer Agents' Association also presented their views. I have gone through the entire matter.

I have come to the conclusion that there is no legal right which can be enforced in this matter. At the same time I am also satisfied that the watchmen who had been pooled have been in service for varying periods prior to pooling and therefore they deserve some kind of compensation. Accordingly, I direct that ex-gratia payment may be made to the workers at the following rates :

(i) Workers with service upto	
5 years and below	Rs. 500
(ii) Workers with service above 5 years but	
below 10 years	Rs. 750
(iii) Workers with service exceeding	
10 years.	Rs. 1000

In respect of those who claim service upto 5 years the burden to prove the shortfall in service if any, will lie on the Steamer Agents' Association. In respect of the others, the burden to prove will be on the respective claimants.

9. Based on the above said award it appears that about 16 workers out of 32 who had raised this dispute had received compensation. The workmen herein are not satisfied with the award. Their contention is that they should have been given compensation at the time of termination by taking into account the entire service they had rendered as Steamer Watchmen. How far that plea is sustainable is the only issue to be sorted out in this dispute.

10. It is not in controversy that these workers were working under various Steamer Watchmen Contractors. A settlement of the year 1971 which was produced by the management [Ext. M1(g)] would show that there were 20 Watchmen Contractors at that time. These workmen might have been working under those watchmen contractors. The claim statement filed by the workmen does not indicate the details of the past service rendered by them or the names of the contractors under whom they were working before the formation of the scheme in 1983.

11. At the time when a governing body was constituted after the framing of scheme in 1983 (pursuant to a conciliation settlement), no provision was incorporated in the settlement in what manner service benefits were to be given on termination of services of watchmen.

12. In the scheme, retirement age of the watchmen was fixed at 58 years. However, those watchmen who had already crossed the age of 58 years were allowed to continue till 15-7-1987 as per Ext. M1(h) settlement. Thus about 32 watchmen were allowed to work for three years and they were to be retired on 15-7-1987. Only when notice was sent requiring those 32 workmen to retire from service with effect from 15-7-1987, they submitted memorandum to the Assistant Labour Commissioner (Central) with the plea that steps might be taken for payment of retrenchment compensation and gratuity in accordance with law. That petition submitted by them later lead to the reference of this dispute.

13. It appears from the document produced by the management that the Steamer Watchmen Contractors framed

the scheme by projecting certain attractive objects. The main object projected by them was that the watchmen under them would get an equitable allocation of work in the Port. After placing the entire watchmen force at the disposal of the government body, they decided to keep back. A notable change brought about by the formation of scheme was that instead of several contractors, a single agency took up the responsibility of regulating the work of the watchmen. Curiously enough, that single agency was prepared to shoulder only the prospective liability in so far as the workmen who were working at its guidance. Because of the formation of the scheme, the watchmen contractors were really absolved from their liability to pay anything towards gratuity and compensation in accordance with law on termination of services of the workmen. Most of the watchmen were aged at the time of formation of the scheme itself. Possibly, anticipating claim for retrenchment compensation in terms of the Industrial Dispute Act, specific clause might have been incorporated making the governing body liable only to the prospective liability i.e., from 1984 onwards. I cannot forget the fact that while putting seal to all those decisions, there was wholehearted support from the trade unions, representing the workmen concerned in the dispute. To pacify those workers who were to retire on 15-7-1987 the Steamer Agents Association and the trade unions at last decided to leave the question of compensation for arbitration, by the Chairman of the Cochin Port Trust. In terms of the award of the Chairman of the Cochin Port Trust, it appears, 16 out of 32 workmen had received compensation also. Only the remaining 16 workmen are now before me. They are dissatisfied with the award of the Chairman of Cochin Port Trust.

14. From the records produced by the management (Ext. M1(d)) it can be seen that decision taken to leave the question of compensation for arbitration by the Chairman of Cochin Port Trust was not pursuant to any conciliation settlement. What had been produced by the management is only a minutes of discussion made by the Steamer Agents Association with the labour representatives. So long as it is not a conciliation settlement, there is no binding force so as to be accepted by the workmen concerned in this dispute. Therefore they are within their right to raise an industrial dispute with regard to the retrenchment compensation and other retiral benefits to which they are entitled.

15. Now let us go through the claim made by the workmen. It is not in controversy that they were steamer watchmen who possessed photo identity cards issued by the Labour Enforcement Officer (Central), Ernakulam pursuant to the memorandum of settlement dated 10-5-1973. After the formation of scheme, there was no change in the nature of their work. The change effected was in the assignment of work to them, on an equitable basis. Instead of several contractors, an association of them more the mantle of the employer. The only radical change which was effected after the formation of the scheme was the fixing of retirement age at 58 years. But as a favour to these workmen, despite their attaining of 58 years on the date of formation of scheme or later they were allowed to work till 15-7-1987. But at the time of termination of their service, they were given only a consolidated sum as compensation instead of calculating the retrenchment compensation as provided under the I.D. Act. That is illegal. There is no clause in any of the conciliation settlement that these workmen are produced from raising any demand for compensation in terms of Sec. 25F of the I.D. Act. Hence the workmen concerned are entitled to get compensation taking into account the total service they had rendered both under the individual watchmen contractors and the governing body of the scheme. But I will make it clear that the Cochin Steamer Association will not be liable for the payment of compensation for the period prior to 1983 and that is in view of the specific provision in the conciliation settlement dated 18-3-1983. The liability for the period prior to the scheme will vest on the individual watchmen contractors. Since those individual contractors are not before me in this dispute, I cannot fix up the extend of that liability in these proceedings. Since the status of the workmen is admitted and the service rendered by them prior to 1983 is also admitted, the proper course for the workmen herein is to file application before the competent Labour Court by invoking Sec 33(c)(2) of the Industrial Dispute Act. They are entitled to claim

retrenchment compensation and other benefits from the individual contractors who were their one time employers with reference to the length of service they had rendered under each of them.

An award is passed in the above terms. No cost.

(Dated this the 16th day of Oct. 1989)

K. KANAKACHANDRAN, Industrial Tribunal

[No. L-35011/6/88-D.III(B)]

APPENDIX

(I. D. No. 62/89)

Witness examined on the side of the management

MW 1 : Shri V. Vaydyanatha Iyer

Witness examined on the side of workmen

WW 1 : Shri K. K. Kunju Mohammed.

Exhibits marked on the side of the Management

M1(a) : Extract from report on demands for decasulisation of additional categories of Dock workers of July 1986 published by Govt. of India, Ministry of Transport.

M1(b) : Settlement dated 18-3-1983.

M1(c) : Addendum dated 9-11-1983.

M1(d) Record, note of discussion with the Steamer Agents' Association and the Labour representatives on 7-5-1989.

M1(e) : Award of Chairman, Cochin Port Trust dated 15-3-1986.

M1(f) : Receipt issued by C.A. Baba dated 30-5-86.

M1(g) : First page of the settlement dated 19-5-1971.

M1(h) : Second page of the settlement dated 19-5-1971

M1(i) : First page of the settlement dated 29-1-1985.

M1(j) : Second page of the settlement dated 29-1-1985.

M2 : Letter dated 10-4-1985 from the Cochin Steamer Agents' Association to all the unions and the Administrative Agency of the pool relating to the particulars of watchmen along with 32 watchmen who were to be superannuated on 15-5-1987.

Exhibits marked on the side of workmen

K. KANAKACHANDRAN, Industrial Tribunal, Alleppey.

Nil—

का. आ. 3150.—ग्रोवर्गिक विवाद अधिनियम, 1917 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार किरिबुरु शायरन और माइट के प्रबन्धनव के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, प्रत्युत्थ में निर्दिष्ट ग्रोवर्गिक विवाद में केन्द्रीय गवर्नर ग्रोवर्गिक अधिकार, में 2, घनवाद के पचापट को प्रकाशित करती है, जो केंद्रीय सरकार को 16-11-89 को प्राप्त हुआ था।

S.O. 3150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kiriburu Iron Ore Mine and their workmen, which was received by the Central Government on 16-11-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD

Reference No. 289 of 1987

In the matter of an Industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

PARTIES :

Employers in relation to the management of Kiriburu Iron Ore Mine and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri K. P. Mishra, the concerned workman himself.

On behalf of the employers.—Shri Nageswar Singh, Asstt. Chief Law Officer.

STATE : Bihar, INDUSTRY : Iron Ore Mines.
Dhanbad, the 8th November, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-26012/8/86-D.III(B)|D.II(A), dated, the 27th October, 1987.

SCHEDULE

"Whether the demand of the workman Shri K. P. Mishra, Canteen Inspector of Bokaro Steel Plants, Bokaro at present posted as Caretaker in Kiriburu Iron Ore Mine of Bokaro Steel Plant under SAIL since 2-7-84 that his transfer to Kiriburu Iron Ore Mine and change in his designation from Canteen Inspector to Caretaker is arbitrary and justified? If so, to what relief the workman is entitled?"

The case of the workmen is that the concerned workman Shri K. P. Mishra was appointed as Canteen Supervisor of Bokaro Steel Plant vide letter dated 20-6-74. His appointing authority-cum-disciplinary authority was BSL, presently SAIL, Bokaro Steel Plant. In July, 1977 he was promoted as Sr. Canteen Supervisor and in 1980 he was promoted as Canteen Inspector. According to the terms and conditions of his appointment he could be transferred to any place where factory act was applicable under the management of B. S. Ltd. In June, 1984 the management of Bokaro Steel transferred the concerned workman to Kiriburu Iron Ore Mines as Caretaker without giving him any notice under Section 9(A) of the I.D. Act. Due to his transfer to Kiriburu Iron Ore Mine as Caretaker, there was a complete change in the nature of his job and designation and thus the management violated the terms and conditions of employment of the concerned workman violating the provision of Section 9(A) of the I.D. Act. Office Order dated 2/4-6-84 signed by Shri A. N. Pandey, Dy. Chief Personnel Manager shows that the concerned workman was temporarily transferred and posted to Kiriburu Iron Ore Mine and that he was a permanent workman of B.S.L. of SAIL. Under the services of SAIL the concerned workman is guided and controlled under the Industrial Disputes (Bihar) Rules, 1961 where factories Act is applicable but in the services of Kiriburu Iron Ore Mine the industrial Disputes (Bihar) Rules, 1961 and Factory Act is not applicable. The concerned workman has lost his seniority and promotional benefits due to his posting at Kiriburu Iron Ore Mine. The management has committed an offence punishable under Section 25(T) and Section 25(U) of the Industrial Disputes Act, 1947 due to the change of the terms and conditions of employment of the concerned workman. On the above facts it has been prayed that the transfer of services of the concerned workman from Steel Authority of India Ltd. to Kiriburu Iron Ore Mines passed by the management of SAIL, Bokaro Steel Plant vide letter dated 2/4-6-84 is illegal and void and that the management is guilty for contravening the provision of Section 9(A) of the I.D. Act in changing the designation and nature of his work.

The case of the management is that the reference under Section 10 of the I.D. Act is bad in law and facts. Kiriburu Iron Ore Mine is a captive mine of BSL, a unit of Steel Authority of India Ltd. (in short SAIL), which is a government company registered under the Company's Act. Since 1-5-78 the Public Iron and Steel (re-structuring and misc.) provision Act, 1978 came into force. Since 1-5-78 when the said Act came into force Kiriburu Iron Ore mine is being controlled and administered by the management of Bokaro Steel Plant. The concerned workman Shri K. P. Mishra was appointed as Canteen Supervisor in the erstwhile Bokaro Steel Ltd. vide appointment letter dated 20-6-84 on the terms and conditions of services stated therein. According to the terms and conditions of his appointment he was to be governed under the provision of certified standing orders of the company which was certified on Appeal in May, 1975. In terms of the provision of clause 2(v) of his appointment letter he was bound, if and what required by the company to serve in any department of their business or in any other business of the company or concern of the company to go or to be transferred to any other place in connection with this business in which case he was to be allowed travelling allowance as provided under the company's rules. In terms of the provision of the Certified Standing orders of Bokaro Steel Plant the concerned workman was liable to be transferred to any establishment of the company and also from one job to another.

While the concerned workman was working as Canteen Inspector at Bokaro Steel Plant he was arrested by CBI on the allegation that he was caught red handed while taking bribe. Thereafter he was placed under suspension. On compassionate ground the order of suspension was revoked under the specific instruction from the Vigilance that he should not be allowed to work in the Canteen section where he was working prior to his arrest by the CBI. Since it was not possible, in the interest of investigation of the CBI case to allow him to work relating to the canteen of Bokaro Steel Plant the concerned workman was posted in training department at Bokaro Steel City to work as Caretaker. Subsequently the concerned workman was transferred to Kiriburu Iron Ore Mines vide transfer order dated 2/4/6-1984. The concerned workman joined at Kiriburu Iron Ore Mine on 2-7-84. In the said transfer order it was clearly mentioned that the concerned workman was being transferred temporarily and that he would get all the transfer benefits as per rules. The concerned workman was informed vide letter dated 24-7-83 that his transfer to Kiriburu Iron Ore Mine as Caretaker was purely on temporary basis and that his substantive post was Canteen Inspector in the Personnel department. Vide officio order dated 2-8-84 it was clarified that the seniority of the concerned workman will be maintained at B.S.L. and it will have no concern with the seniority of the employees of Kiriburu Iron Ore Mine as his transfer was purely on temporary basis. The facts stated will show that notwithstanding the right of the management to transfer the concerned workman to any other department or other job, the transfer was necessitated only when on compassionate ground the suspension order of concerned workman was revoked and it was not considered desirable to entrust him the job with which he was involved in CBI case and the investigation was not over. The concerned workman had not been transferred with any malafide intention to harass or victimise him. The concerned workman has not been adversely affected by his transfer either in the matter of his seniority or otherwise and the transfer is purely temporary in nature and intended only to help the concerned workman to get his full salary and allowance rather than subsistence allowance and as such there was no question of giving any notice under Section 9(A) of the I.D. Act. The management has not done anything to show that it was guilty of any unfair labour practice. On the above facts it is prayed that it may be held that the demand of the workmen is not justified and that the concerned workman is not entitled to any relief.

The points for decision are—

1. Whether the transfer of the concerned workman from BSL to Kiriburu Iron Ore Mine is legal and justified.
2. Whether the change of designation of the concerned workman from Canteen Inspector to Caretaker is arbitrary and justified,

3. Whether notice under Section 9(A) of the I.D. Act was necessary prior to the transfer and changing of the designation of the concerned workman and

4. To what relief the concerned workman is entitled ?

The workmen and the management each examined one witness in support of their respective case. The documents of the management have been marked Ext. M-1 to M-9 and the documents of the workmen are marked Ext. W-1 to W-4.

Point No. 1

It is the admitted case of the parties that the concerned workman Shri K. P. Mishra was working as a Canteen Inspector of BSL, Bokaro at the time he was arrested by the CBI with an allegation that he was caught red handed while taking bribe in December, 1981. It is also admitted by the parties that CBI took up the investigation of the case against the concerned workman and one Shri B. K. Jha, Asstt. Manager of the Canteen. The concerned workman WW-1 Shri K. P. Mishra has stated in his evidence that he and Shri B. K. Jha are involved in the CBI case which is now pending in the Court at Ranchi of which the case No. is 2/82(R). WW-1 has further stated that he and the said Shri B. K. Jha were transferred on the same date. He has stated that Shri B. K. Jha was transferred to Calcutta and he was transferred to Kiriburu Iron Ore Mine. Ext. M-1 dated 20-6-74 is the offer of appointment to the concerned workman. The terms and condition of his services are stated therein. Para-V of the said terms and conditions stated in Ext. M-1 shows that the concerned workman shall be bound if and when required by the company to serve in any department of their business or in any other business of the company or concern of the company to go or to be transferred to any other place in connection with their business in which case he shall be allowed travelling allowance as provided for in the company's rules. Thus the very terms and conditions of the appointment of the concerned workman was that he could be transferred to any other place in connection with the business of the company and to serve in any department of their business. Thus it will appear that the transfer of the concerned workman from Bokaro Steel Plant to Kiriburu Iron Ore Mine was done in accordance with para-V of the terms and condition of his appointment stated in Ext. M-1.

Ext. M-8 is the Standing Order of Bokaro Steel Ltd. Clause 35 of the Standing Order deals with transfer. It provides that any workman shall be liable to be transferred from the works to any establishment of the company either at Bokaro Steel city or outside and shall also be liable to be transferred from one department to another or from one job to another and that such transferred workman will be entitled to such allowance and other amenities which may be applicable to other workmen in similar jobs where the workman concerned is transferred.

The management filed the service rules which was marked Ext. M-9 but the same was returned back after taking an extract of clause 8 of the said service rules on the record MW-1 Shri B. N. Singh working as P.M. in the personnel department at Bokaro Steel city has stated in his evidence that under clause 8(2) of the Service rules there is a provision that the company shall have the right to transfer any employee at any time from one job section or department to another and also from the company's one office to another which may be situated in any part of India. Clause 8(1) of Ext. M-9 provides that company shall have the right to transfer any employee at any time from one job section or department to another and also from the company's one office to another which may be situated in any part of India and that such transfer shall not involve a decrease in rate of pay or in condition of service. The service rule also show that the management of B.S.L. has the right to transfer the concerned workman from job of his Canteen Inspector to the post of Caretaker from Bokaro Steel city to Kiriburu Iron Ore Mines which is a captive mine of B.S. Limited. It is not disputed by the workman that Kiriburu Iron Ore Mine is not a captive mine of Bokaro Steel Plant, a unit of SAIL, since 1-5-1978 and that since 1-5-1978 Kiriburu Iron Ore Mine is being controlled and administered by the management of B.S. Plant.

The concerned workman WW-1 has stated that his designation of Caretaker at Kiriburu Iron Ore Mine is at par

with the post of Canteen Inspector in the personnel department of Bokaro Steel Plant and that he is being paid the same basic pay as Caretaker which he was getting as a Canteen Inspector at the time of his transfer and that he is also getting annual increment at Kiriburu Iron Ore Mine in the scale of pay of Canteen Inspector. It appears therefore that the transfer of the concerned workman to Kiriburu Iron Ore Mine did not decrease in the rate of pay or in the conditions of service.

In view of the evidence discussed above I hold that the transfer of the concerned workman from Bokaro Steel Plant to Kiriburu Iron Ore Mine is legal and justified.

Point No. 2.

It is the admitted case of the parties that the concerned workman was working as a Canteen Inspector in Bokaro Steel when he was transferred to Kiriburu Iron Ore Mines as Caretaker. It will appear from Ext. M-1, Ext. M-8 and Ext. M-9 that the concerned workman could be transferred from Bokaro Steel Plant to Kiriburu Iron Ore Mine which is the captive mine of Bokaro Steel Plant. Admittedly the establishment of Kiriburu Iron Ore Mine is an establishment of Bokaro Steel Plant and is controlled from Bokaro Steel Ltd. of the SAIL. The exhibits mentioned above will also show that the concerned workman could be transferred from one department to another or from one job to another and therefore his transfer as Caretaker at Kiriburu Iron Ore Mine was a transfer from one department to another and from one job to another without putting him in any loss regarding his basic pay in the scale of pay. WW-1 has clearly admitted in his evidence that his designation of Caretaker at Kiriburu Iron Ore Mine is at par to the post of Canteen Inspector in the personnel department of Bokaro Steel Plant. He has stated that he does not know if the scale of pay and grade of caretaker is the same as Canteen Inspector but he has admitted that he is being paid the same pay as Caretaker as that of Canteen Inspector of Bokaro Steel Ltd. and that he is getting the annual increment at Kiriburu as Caretaker equal to that of Canteen Inspector at Bokaro Steel City. The concerned workman has no doubt tried to show some of the disadvantages of his posting at Kiriburu constituting a change in the condition of his service. Clause 35 of the Standing Order Ext. M-8 shows that transferred workmen will be entitled to such allowance and other amenities which may be applicable to other workmen in similar jobs where the workman concerned is transferred. There is no evidence to the effect that the case of the concerned workman was being treated differently in respect of the allowance and other amenities which were applicable to other workmen in similar jobs where the concerned workman was transferred. As such the mere change in designation of the concerned workman from Canteen Inspector to Caretaker is not a change in the condition of service of the concerned workman as the same is in accordance with the terms and condition of his service and in accordance with the standing orders and the service rules applicable to the concerned workman. I hold therefore that the change of designation of the concerned workman from Canteen Inspector to Caretaker is not arbitrary and unjustified.

Point No. 3

It has been submitted on behalf of the workmen that as the management has changed the condition of service, it was necessary that notice under Section 9(A) of the I.D. Act should have been given to him. Section 9(A) of the I.D. Act provides "no employer who proposes to effect any change in the condition of service applicable to any workmen in respect of any matter specified in the 4th schedule, shall effect such change,—

- (a) without giving to the workmen likely to be effected by such change a notice in the prescribed manner of the nature of the change proposed to be effected."

Admittedly, no notice under Section 9(A) of the I.D. Act was given to the workmen. It will appear from the case of the parties that the transfer of the concerned workman from Bokaro Steel Plant to Kiriburu Iron Ore Mine and the change of his designation from Canteen Inspector to Care-

taker was for a temporary period and that the seniority of the concerned workman shall be maintained at Bokaro Steel plant. The condition of service stated in the letter of appointment of the concerned workman, standing order and the service rules was not changed by the transfer of the concerned workman to Kiriburu Iron Ore Mine as Caretaker because the management had the power to transfer a workman to any place for the business of the company and designation also could be changed. Moreover the provisions of 4th schedule of the I. D. Act which finds referred in 9(A) has not been violated by the transfer of the concerned workman to Kiriburu and the change of his designation as Caretaker. In view of the above I hold that the transfer and change of the designation of the concerned workman has not changed the condition of his service as stated in the 4th Schedule of the Industrial Disputes Act and as such I hold that there was no necessity of giving any notice under Section 9(A) of the I. D. Act to the concerned workman prior to his transfer to Kiriburu Ore and the change of his designation which did not effect the condition of service of the concerned workman.

Point No. 4

It is the admitted case of the parties that the transfer of the concerned workman to Kiriburu Iron Ore Mine as Caretaker was a temporary measure. It is also admitted that a CBI case against the concerned workman was being investigated and the concerned workman had been suspended and thereafter his suspension order was revoked and he was first transferred from the post of Canteen Inspector to the post of Caretaker, training department, BSL, Bokaro Steel City and thereafter he was temporarily transferred and posted at Kiriburu Iron Ore Mines with immediate effect vide transfer order Ext. M-2 dated 2/4/6-1984. Ext. M-4 dated 24-7-1984 is a letter from the management to the concerned workman which shows that his transfer and posting to Kiriburu Iron Ore Mine as Caretaker was purely on temporary basis and that his substantive post is Canteen Inspector in the personnel department. Ext. M-5 is the office order dated 2-8-1984 which shows that the seniority of the concerned workman as Caretaker will be maintained at B.S. City and it will have no concern with the seniority of the employees of Kiriburu Iron Ore Mines since his transfer and posting to Kiriburu Iron Ore Mine is purely on temporary basis. MW-1 has also stated that the transfer of the concerned workman was a temporary measure. MW-1 has stated that a CBI case was instituted against the concerned workman while he was working in the canteen and the CBI was investigating the case against him which led to the transfer of the concerned workman from the Canteen department. He has further stated that when there was any CBI case against an employee he is not allowed to continue in the same department in which he was working till the disposal of the CBI case. Although no rule has been filed by the management on the subject but for the sake of free and uninterfered investigation it is an accepted principle that during the investigation of case the workman concerned is suspended or transferred from the department and as such the transfer of the concerned workman from Bokaro Steel Plant to Kiriburu Iron Ore Mine does not appear to be a measure of vexation of the concerned workman. Admittedly, the transfer of the concerned workman was made for a temporary period and his seniority was being maintained at Bokaro Steel City and as such the concerned workman did not suffer as it was a short term arrangement.

The grievance of the concerned workman is that Shri B. K. Jha, Asstt. Manager, Canteen against whom also the CBI was making investigation along with the concerned workman after transfer from Bokaro Steel City to Calcutta was re-transferred to Bokaro Steel City and was looking after the canteen at Bokaro Steel Plant but the concerned workman who was transferred on the same ground to Kiriburu has not been re-transferred to Bokaro Steel City and posted in the Canteen department. This fact has been admitted by MW-1. Ext. M-7 will further show that although the case against Shri B. K. Jha has not concluded he has been promoted to the post of D.V. Manager at Bokaro Steel plant. The ground for transfer of the concerned workman to Kiriburu was that as the CBI was investigating the case against him, it was not proper to retain him in the canteen department and therefore

the concerned workman as well as Shri B. K. Jha, Asstt. Manager of the Canteen were transferred. It is now admitted that the investigation of the CBI case has concluded and the case is now pending for hearing before the Court dealing with CBI case. Thus the ground which related to the transfer of the concerned workman no longer exists and it appears that on that account Shri B. K. Jha, Asstt. Manager Canteen who was transferred to Calcutta has been re-transferred to B. S. City. In the case of the concerned workman also I think that the same principle should apply and the management should not behave in a manner which could give reasonable doubt in the mind of the concerned workman that as Shri B. K. Jha was an Officer he was favoured with his re-transfer to B. S. City in about a year whereas the concerned workman is continuing at Kiriburu Iron Ore Mine since June, 1984. I think there is now no impediment in the way of re-transfer of the concerned workman from Kiriburu Iron Ore Mine to B. S. City when the investigation of CBI case is completed and the management itself has re-transferred Shri B. K. Jha to B. S. City. It has been tried to be shown to me that as the allegations against the concerned workman were of a more serious nature than the allegations against Shri B. K. Jha, their case cannot be taken on similar footing. It is not for the management to decide about the outcome of the criminal case and the nature of allegation against the concerned workman and Shri B. K. Jha and the only thing to be considered was that as the investigation of the CBI case has been completed and the case is now pending in the Court, there is no impediment in transferring the concerned workman from Kiriburu Iron Ore Mine to B. S. City specially in view of the fact that the management was always assuring the concerned workman in writing that his transfer was only of temporary nature. It will appear from the evidence of MW-1 that the management is under the impression that the concerned workman cannot be transferred unless the CBI case pending against the concerned workman is disposed off by the Court. If that is so, the management cannot differentiate the case of the concerned workman from the case of Shri B. K. Jha. When Shri B. K. Jha could be transferred from Calcutta to B. S. City after the investigation of CBI case was complete, there is no reason as to why the concerned workman should not be re-transferred from Kiriburu to Bokaro Steel City. It is in the interest of the management itself that they should not give any impression to their own workmen that they are making distinction of the case of a workman from the case of an officer of B. S. Plant. In the above view of the matter I am of the opinion that the concerned workman should also be re-transferred from Kiriburu Iron Ore Mine to Bokaro Steel Plant. I leave it to the management regarding the place of his posting at Bokaro Steel city with the direction that he should not be put to any disadvantage regarding his pay and allowance and other amenities which are applicable to the other workman in similar jobs. The management is directed to re-transfer the concerned workman from Kiriburu Iron Ore Mine to B. S. City within one month from the date of publication of the Award.

An award is passed accordingly.

I. N. SINHA, Presiding Officer.
[No. L-26012/8/86-D. III (B)]

नई दिल्ली, 23 नवम्बर, 1989

का. आ. 3151—श्रीओगिक विवाद अधिनियम, 1947 (1947 का 14) की प्राया 17 के प्रत्यारण में, केन्द्रीय सरकार और सुमारी पोर्ट ट्रस्ट के प्रबन्धितातं के मध्य नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट श्रीओगिक विवाद में केन्द्रीय सरकार और ओगिक अधिकारण, भ. 1, बम्बई के पंचपट की प्रकाशित करनी है, जो केन्द्रीय सरकार को 21 नवम्बर, 1989 को प्राप्त हुआ था।

New Delhi, the 23rd November, 1989

S.O. 3151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Bombay as shown in the An-

nexure, in the industrial dispute between the employers in relation to the management of Mormugao Port Trust and their workmen, which was received by the Central Government on 21-11-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY

PRESENT :

Mr. Justice M. S. Jamdar, Presiding Officer.
Reference No. CGIT-5 of 1988

PARTIES :

Employers in relation to the management of Mormugao Port Trust.

AND
Their Workmen.

APPEARANCES :

For the Management : Mr. K. J. Presswalla, Advocate.
For the Workmen : Mr. Madan Phadnis, Advocate.

INDUSTRY : Ports & Docks. STATE : Goa.
Bombay, dated the 25th day of August, 1989

AWARD

The Central Government, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Mormugao Port Trust in effecting change in the service conditions of Electrical Technicians through their Circular No. CME-E-1(a)2694 dated 12th June, 1985, without complying with the provisions of Section 9-A of the Industrial Disputes Act, 1947, is justified ? If not, to what relief the concerned workmen are entitled to ?"

2. By the impugned circular dated 12-6-1985, which according to the workmen effected change in the service conditions of Electrical Technicians, works connected with servicing/repairs of the electrical motors which were being handled by the Mechanical staff of the Mechanical Over Handling Plant (MOHP) were sought to be assigned to the Electrical Staff, with the avowed object of maintaining continuity of work and also to increase efficiency during normal working hours. The said circular reads as follows :

"At present all the works connected with servicing/repairs of the electrical motors viz. decoupling of the motors, removal from the foundation, extraction of the coupling, transportation etc., are generally being handled by the Mechanical staff of the electrical motors MOHP. The works pertaining to the servicing/repairs of the electrical motors constitute a part of the electrical works. Therefore, all the works connected with the removed of the motor from the drive assembly including de-coupling, extraction of the coupling, transportation, repairs/servicing of the motors, refitting of the coupling, transportation back to the conveyor assembly will henceforth have to be carried out by the electrical staff. Mechanical assistance for removal of the foundation bolts and extraction of the gear-type coupling will be available only in the case of H.T. motors."

3. On issuance of this circular, Goa Port and Dock Employees Union, raised an Industrial Dispute which was admitted in conciliation and hence the Port Trust Authorities kept the said circular in abeyance. The conciliation failed but the Central Government held that there was no ground for reference for adjudication and hence the Plant Manager of the Chief Mechanical Engineers Department issued another circular in April, 1986, declaring that the said circular of June, 1985, can be brought into effect immediately. Thereafter, the Mormugao Water Front Workers Union (hereinafter referred

to as "the Workers Union"), which most of the Electrical Technicians working in the Plant of the Chief Electrical Department, Mormugao Port Trust joined as members took up the matter with the management. But the direct negotiations failed and even the suggestion to make a reference to the Industrial Tribunal was rejected by the management and hence some of the chargesheeted Electrical Technicians filed Writ Petitions in the High Court. In those proceedings, the order of the Government of India refusing to refer the dispute for adjudication was quashed and set aside and the Government of India was directed to apply its mind and decide whether the industrial dispute was fit for reference under section 10 read with section 12 of the Industrial Disputes Act, 1947.

4. According to the Union, the jobs which the Electrical Technicians are required to attend to under the circular dated 12-6-1985, were handled since the inception of the Port Trust by the Mechanical Technicians with the help of Khalasis. The Union further contended that as per the staffing pattern adopted by the Port Trust in the Chief Mechanical Engineers Department particularly in the Receiving and Shipping Section there are 172 Khalasis on the Mechanical side as against only 2 of the Electrical side and that all these years the Khalasis working with the Mechanical Technical Technicians were mainly handling the jobs which are now required to be attended to by the Electrical Technicians such as transportation, removing of motors from the foundation, decoupling and re-coupling, extractions of the coupling and refitting and that the change is sought to be effected without making any change in the staffing pattern, by transferring some of the Khalasis from Mechanical side to the Electrical side. The Union further contended that the change sought to be effected by the impugned circular is not merely a technical change but as admitted by the management of Port Trust before the Conciliation Officer, it amounts to rationalisation, which the management seeks to effect without effecting any change in the staffing pattern by providing adequate strength of staff in the Electrical Department. The Union further submitted that the new jobs entrusted to the Electrical Technicians are completely manual jobs and do not involve any Electrical technique and as such cannot fall within the Electrical discipline at all, as claimed by the management and in view of the relevant strength of Khalasis the proposed transfer of duties from Mechanical side to Electrical side is unjust, harsh, and grave particularly in view of the fact that the new duties are of the nature of totally manual work requiring Electrical Technicians to handle jobs of transportation removal from drive assembly, extraction of the coupling, and further transportation back to the conveyor assembly. The Union further contended that considering the weight of the motors and also considering the height at which these motors are installed and the distance to which the motors are required to be transported it is not possible for a single technician to remove the motor from one place to another without the help of Khalasis and hence the orders contained in the circular are not only unreasonable but practically impossible to be attended to by the technicians without the help of Khalasis and unless the strength of Khalasis is altered it is impossible to except the Electrical Technicians to attend to the work sought to be entrusted to them by the impugned circular. The Union further contended that the nature of the new jobs which are now being entrusted to the Electrical Department are beyond the physical efforts, capacity and capability of the Electrical Technicians and therefore the order compelling them to do the jobs which they cannot physically do is irrational, arbitrary and capricious and therefore illegal and unjustified. According to the Union, the jobs of removing, transportation, carrying, pulling etc. cannot be handled without instruments such as sling, chain-block, over-head crane, crowbar hook, chuk-welding, cutting sets at times, big spanners, mobile cranes and trucks and require a particular skill and training which was not given to the Electrical Technicians before introducing the change. The Union further contended that even in the ELC section of the Chief Mechanical Engineer Department of the Mormugao Port Trust transportation, removal and other duties which the Port Trust Authorities want the Electrical Technicians to do are continued to be handled by the Mechanical discipline and in almost all the Port Trusts and other engineering departments, shifting of the electrical motors as heavy as

those in the Mormugao Port Trust is attended to by the Mechanical discipline and not by the Electrical discipline and hence the notice dated 12-6-1985 is unjust, harsh, arbitrary and irrational. The Union, further submitted that the management of the Mormugao Port Trust (MPT) will ultimately get the benefit out of the continuity of the work flow during the working hours and increased efficiency sought to be achieved by the proposed change. It would therefore be equitable, that the benefits derived from the increased efficiency of the Electrical Technicians is shared by the management with them and hence it is necessary to direct the Port Trust Authorities to pay compensation to the Electrical Technicians for attaining increased efficiency and maintaining continuity of work flow during the working hours. The Union therefore prayed that the Mormugao Port Trust Authorities be directed to withdraw the circular dated 12th June, 1985, until staff of the Electrical discipline is increased and the Electrical Technicians are adequately compensated for the additional duties which they are called upon to perform under the circular dated 12th June, 1985.

5. The Management of Mormugao Port Trust stated that the Mechanical Ore Handling Plant (MOHP), which is a unique plant being the only one its kind in India, has several electrical motors of all sizes weighing about 10 kgs. to 3.7 tonnes fixed on heavy foundations besides several mechanical moving parts which enable the cranes of the barge unloaders, the conveyor belt etc., to move, for which the power is supplied by the motors. The various categories of employees who look after the day-to-day maintenance of the plant are Assistant Technicians, Technicians Grade-II, Technicians Grade-I, Supervisors, Foremen, Junior Engineers, Assistant Engineers, Assistant Plant Superintendents, Deputy Plant Superintendents, Superintending Engineer, who are under the overall control of the Plant Manager and ultimately of the Chief Mechanical Engineer, who are all aided by a category known as Khalasis, who are labourers, who help in jobs which require manual efforts. The management further stated that the duties of Technicians (Electrical) are mainly and substantially of electrical nature such as actual dismantling of motors, overhauling of motors and repairs of motors etc., and this job incidentally also involves certain amount of basic mechanical work such as disconnecting the motors from the drive machinery to which key are connected, which is known as decoupling, removing them from their foundation etc. Since the motor rotates at a high speed it has bearings on either sides. This mechanical work is of very elementary nature. The management maintained that the job of Technician (Electrical) is to delink the motor, in order to effect repairs, from the other machinery which process is known as decoupling; unscrewing and removing from the foundation and having it taken to the repair shop and carry out the repairs after dismantling the same if the repairs cannot be carried out on the spot. However, initially when the plant was new and in its infancy there were fewer Technicians (Electrical) and the plant being new it did not require much mechanical repair and hence the MPT used to generally have the work of motors being de-coupled, removed from the foundation and transported to the repair workshop done by Technicians (Mechanical) so that the Technicians (Electrical) could devote themselves solely to the electrical part of their work and thereby save time to do only the electrical repairing work which a Technician (Mechanical) would have no knowledge about. This only meant that the Technicians (Electrical) were relieved of this incidental mechanical work in order that work of actual repair of the motors did not suffer due to shortage of the Technicians (Electrical). This did not mean that the incidental work, such as decoupling, removing the motors from their foundations, shifting them to the workshop, re-shifting them, placing them on the foundations and re-fixing them to the machinery was not a part of their job. The management maintained that infact, the entire job of decoupling of motors removing the same from their foundations and shifting the same to the workshop has on several occasions in the past done by the Technicians (Electrical) as a part of their work, and that there is record to show that the work which is mentioned in the circular dated 12-6-1985, was actually done by the Technicians (Electrical) in the previous years. According to the management, the strength of the Technicians (Electrical) which was very low was increased from 31 to 50, to 69 in

1983, and to 70 in 1984, and hence it was no longer necessary to have the incidental mechanical work involved in the repairing of the motors, in most cases, to be done by the Technicians (Mechanical). It was also realised by the management that when the Technicians (Mechanical) were not available for doing the work of decoupling and of removing the motor from the foundation, the Technicians (Electrical) were sitting idle and wasting their time till Technicians (Mechanical) were available to do that work. In view of this and in view of the fact that it was no longer necessary to relieve the work-load of the Technicians (Electrical) and to restrict it to purely electrical work and have the incidental mechanical work done by the Technicians (Mechanical) that the circular dated 12-6-1985, was issued by the Plant Manager. The management further maintained that there is no such thing in the MOHP as Mechanical Department and Electrical Department and the Khalasis are assigned to both Technicians (Electrical) as well as Technicians (Mechanical), the number of Khalasis assigned depending upon the type and nature of work assigned to technicians and that there is record to show that for several types of works which Technicians (Electrical) have been doing, they have been assigned the help of several Khalasis. The management maintained that the work of decoupling, removing the motors from the foundation and shifting them to the workshop was also done by the Technicians (Electrical) and that in doing the same work the assistance of Khalasis was always given to both the Technicians (Mechanical) as well the Technicians (Electrical) and in the proceedings in the High Court itself the MPT Counsel had specifically stated that the work of shifting of motors, decoupling and removal from foundation, etc. will always be necessarily carried out with the assistance of semi-skilled workers. The management further maintained that the Khalasis are administratively i.e. for the purpose of leave, attendance and posting, under the control of Mechanical Supervisory staff and are assigned to the Technicians Mechanical as well as Electrical while the attendants and operators are similarly under the control of Electrical Supervisory staff for administrative purposes. No Khalasis are attached either to any Mechanical or Electrical Technicians, but are assigned to Electrical Technicians and Mechanical Technicians depending upon the exigencies of work and the type of work these Technicians are required to carry out at a particular time and hence there is no question of changing the staffing pattern or of removing them from Mechanical side and transferring them to Electrical side. The management denied that the job of decoupling of motors, removing them from the foundations and transporting them to the workshop and back is completely of manual nature and maintained that it does not involve any electrical technique and hence does not fall within the electrical discipline at all. The National Apprenticeship Certificate Course which is one of the required qualifications of Technician Electrical in the MPT Recruitment Rules shows that the Technicians (Electrical) are trained in several other allied trades such as fitting, drilling and even carpentry and sheet metal trades. The management maintained that these incidental mechanical trades are part of the electrical discipline, and as per the job description of the Technicians (Electrical) as set out in the MPT circular dated 6th August, 1980, the Technicians (Electrical) are responsible for the Electrical portion, running and preventive maintenance of the machines and sub-station and are required to do all such jobs related to machines as the situation demands or as per the supervisor's instructions to facilitate minimum interruption and smooth operation of the system. The management further asserted that the Technician (Electrical) are given adequate amount of help of manual nature by providing them Khalasis to do the aforesaid jobs as well as other Mechanical equipments required to lift and move such motors and further maintained that the help of Khalasis was and is given and will always be provided to the Technicians (Electrical) to help them to carry out their work.

6. The workmen filed equally lengthy re-joinder reiterating what they stated in their statement of claim and denying the averments to the contrary in the written statement filed on behalf of the management.

7. As can be seen from the schedule to the order of the reference, the scope of the reference is very limited. It is limited to the consideration of the question as to whether the impugned action of the management in effecting change

in service conditions of Electrical (Technicians) through the circular dated 12-6-1985, taken without complying with provisions of the section 9(a) of the Industrial Disputes Act, 1947, is justified. The question whether the action is otherwise justified is not specifically referred for adjudication.

8. The action of the management of MPT in directing that all works connected with the removal of motors from drive assembly including decoupling, extraction of coupling, transportation, repairs|servicing of the motors, decoupling of the motors, transportation back to the conveyor assembly will hence forth be carried out by the Electrical staff and that the Mechanical assistance for removal of the foundation bolts and extraction of the gear type coupling will be provided only in the case of high tension motors, can be styled as rationalisation, standardisation or improvement of plant or technique within the meaning of clause 10 of the Fourth Schedule. But as the action is not likely to lead to retrenchment of workmen it was necessary to comply with the provisions of section 9-A of the Industrial Disputes Act, 1947. The action is not covered either by clause 9 or any other clause of the Fourth Schedule of the Industrial Disputes Act, 1947 and on that account also the question of complying with the provision of section 9-A of the Industrial Disputes Act, 1947, did not arise. The Union, therefore, has conceded the position that the impugned action cannot be considered as unjustified on the ground that it was taken without complying with the provision of section 9-A. There is, therefore, some force in the contention of the management that the reference does not survive and that it is not necessary for this Tribunal to go into the question whether the action is otherwise generally justified.

9. Even making some allowance for the mistake in the drafting of the schedule of the reference order and even assuming which assumption is justified by the observations of the High Court made while quashing the order of the Government of India, refusing to make the reference, that the reference contemplates consideration of the question of general justifiability of the impugned action, the action is fully justified. It is an admitted position that it is the function of the electrical technicians to attend to the electrical motors. It is also an admitted position that it is exclusively the duty of the electrical technicians to repair the electrical motors either on the spot, if possible, or in the workshop. Decoupling of the motors, removal from the foundation, extraction of the coupling, transportation, refitting of the coupling, transportation back to the conveyor assembly or overhaul is connected with servicing|repairs of the electrical motors. No doubt, these works are of mechanical nature, but they are elementary and incidental to and connected with the servicing|repairs of the electrical motors. Basically therefore, these jobs form part of primary duties of electrical technicians.

11. One of the grievances of the concerned workmen is as Technicians (Electrical) are set out in the Memorandum, a specimen of which is produced at Exh. M-4, Clauses 7 and 9 of this Memorandum, which are relevant so far as the question of nature of work which the appointee is expected to perform, is concerned read as follows :—

"7. His duties will include operation as well as maintenance of all the equipment of the Mechanical Ore Handling Plant and other duties as are assigned to him from time to time.

9. He will be required to attend Mechanical Ore Handling Plant or any other work spot at any part of the day and night at short notice."

These provisions are wide enough to include assignment of elementary and incidental work of mechanical nature to the electrical technicians in respect of the electrical motors which they are expected to handle.

11. One of the grievances of the concerned workmen is that he manual work in these processes especially in respect of heavy motors cannot be expected to be carried out by the electrical technicians, nor it is physically possible for them to do so without the assistance of the Khalasis. But nobody expects the electrical technicians to do the manual work involved in these processes without the assistance of Khalasis. The impugned circular also does not contemplate that the electrical technicians must themselves carry out all these processes even in respect of heavy motors without the assistance of Khalasis. As a matter of fact, the circular

contemplates of mechanical assistance i.e. the assistance of Technician (Mechanical) for carrying out these processes in respect of high tension motors. The management has categorically asserted that assistance of Khalasis was given to the Technicians (Electrical) as and when necessary in the past, that such assistance is being given and will be given in future also. There is definite evidence to substantiate this assertion of the management.

12. Shri Sakaram Mhambre, Witness No. 1, for the workmen, who is working as Junior Engineer, Grade-B (Electrical) in the MOHP, since January, 1982, and who has described the general working of the Shipping Section and Receiving Section of MOHP has stated in his examination-in-chief itself that in case assistance of Khalasis was required for the electrical work he used to ask his counterpart to depute Khalasis for that work. He has admitted in his cross-examination that in the Shipping Section as well as in the Receiving Section there are separate high tension contactors for each motor and that the work of replacing the contactors was done by the electrical technicians with the help of Khalasis. He has also admitted that work of removing the resistance box weighing about 150 kgs. and attached to the barge unloader is done by the electrical technicians with the help of Khalasis. He has also admitted that the work of laying that high tension cables connected to the bus-bars is done by the electrical technicians with the help of Khalasis. Shri Joy P. Mathew, witness No. 4 for the workmen who is working as Supervisor Grade-I (Electrical) in the MOHP since May 1979, has stated in his examination-in-chief itself that in case of need he used to get the Khalasis from the Mechanical Section.

13. It was contended on behalf of the workmen, that most of the Khalasis in the MOHP are attached to the Mechanical discipline and unless and until the staffing pattern is changed and more number of Khalasis are attached to the electrical discipline the impugned circular cannot and should not be implemented. This contention cannot be accepted firstly because to whatever discipline most of the Khalasis are attached they are made available to electrical technicians as well, for doing the manual work, involved in the duties assigned to the electrical technicians. Shri Sakaram Mhambre (WW-1) has admitted in his cross examination that the Receiving In-charge of the Receiving Section who may be Assistant Plant Superintendent or Assistant Engineer and may be either Technical Engineer or Mechanical Engineer is In-charge of the Electrical and Mechanical disciplines. He also admitted that presently, one of the shifts In-charge is electrical engineer. In view of this composition, of the Receiving and Shipping Sections the fact that most of the Khalasis are attached to the Mechanical Section/discipline for administrative purposes, has no particular significance and it cannot be contended that unless substantial number of Khalasis are attached to the electrical discipline the new jobs mentioned in the impugned circular cannot be entrusted to the Technicians (Electrical).

14. Another grievance of the concerned workmen is that some of the motors are heavy and that the processes mentioned in the circular involve special skill and use of various instruments which the Technicians (Electrical) are not trained to handle. The admissions given in their cross-examination by the witnesses examined on behalf of the workmen clearly negatives the case of lack of requisite skill and experience of handling instruments necessary for carrying out the processes which are sought to be transferred to the electrical technicians by the impugned circular. Shri Sakaram Mhambre (WW-1) has admitted in his cross examination that the high tension contactors have foundation bolts and spanners are required for removing the foundation bolts for replacing the contactors. He has also admitted that while repairing the motors in the workshop the electrical technicians are required to use instruments like lifting tackle, and chain & pulley for the purpose of turning or changing the position of the motors, spanners for operating/opening the motor, and puller or bearing extractor for removing bearing from the rotating shaft. He also admitted that large motors have sliprings and that for repairing the motors, pullers are required for removing the rings. He also admitted that only removing bolts are required to be done for decoupling of the motor, that removing bolts of the coupling is like removing any other bolts and that the electrical technicians use both types of bolts generally used in

MOHP plant while repairing the motor. He also admitted that the resistance box weighing about 150 kgs. is attached to the barge-unloader, the work of removing these boxes which are fixed to the panels of the barge unloader by means of foundation bolts, is done by the electrical technicians with the help of Khalasis. He further stated that the boxes which are fixed at a height of 25 to 30 meters from the ground are removed by removing the foundation bolts and lowered by means of an electric overhead crane. He also admitted that high tension cables are connected to bus-bars by means of nuts and bolts, the largest of the bolts used for that purpose is 25 mm. in diameter. He also admitted that the highest point at which contactor is fixed is 20 meters from the ground level and for lowering these contactors overhead crane is used. Shri Gokuldas Maykar, Witness No. 2 for the workmen, who is presently working as Technician Grade-I (Electrical) has also admitted in his cross-examination that he used pullers for removing the slip-rings of the motors and also for the purpose of removing resistance boxes and also while removing the bearing from the shaft. Shri Joy P. Mathew, Witness No. 4, for the workmen has also admitted in his cross examination as follows :—

"It is correct to say that some motors have smaller foundation bolts than the foundation bolts of some contractors. The bolts of the contractors are removed by the electrical technicians with the help of Khalasis. Spanners are used for dis-mantling the motors for the purpose of repairs. Sometimes for shifting and turning electrical motors under repairs the electrical technicians use lifting tackles also Slings and Crow-bars and shackles are also used by the electrical technicians with the help of Khalasis for that purpose."

It is therefore futile to contend that for absence of training and experience in handling the instruments required for carrying out the processes which are sought to be transferred to them under the impugned circular it would not be possible for the Electrical Technicians to do that work.

15. The management has explained the circumstances in which the jobs mentioned in the circular were entrusted to the Mechanical discipline in the past. There is also documentary evidence to show that even in the past when these jobs were entrusted to the Mechanical Technicians the Electrical Technicians also used to perform those jobs on some occasions. The contention that Electrical Technicians used to remain idle and their time was wasted till the Technicians (Mechanical) carried out the processes in respect of the motors to be repaired is not denied even in the lengthy rejoinder filed on behalf of the workmen to the written statement of the management.

16. The demand of the workmen that they should be allowed to share the benefits that are likely to accrue to the management in view of the steam-lining of the working and increase in efficiency of the Electrical Technicians cannot also be accepted because it would be difficult to calculate the tangible benefit that is likely to be derived from the distribution of work contemplated by the circular. In the result, I hold that the impugned action of the management of Mormugao Port Trust was perfectly justified and the workmen are not entitled to any relief. Award accordingly.

M. S. JAMDAR. Presiding Officer
[No. L-36011/5/85-D. IV(A)|D. III (B)]

का. धा. 3152 — श्रोतृगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार कलकत्ता पोर्ट ट्रस्ट, कलकत्ता के प्रबन्धनालय के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनन्देश में निर्धिष्ट श्रोतृगिक विवाद में बोर्डीय सरकार श्रोतृगिक अधिकारण कलकत्ता के पंचपट को प्रकाशित करनी है, जो केन्द्रीय सरकार की 2-1-89 को प्राप्त हुआ था।

S.O. 3152 — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in

the industrial dispute between the employers in relation to the management of Calcutta Port Trust, Calcutta and their workmen, which was received by the Central Government on 21-11-89.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 21 of 1989

PARTIES :

Employers in relation to the management of Calcutta Port Trust

AND

Their workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty, Presiding Officer.

APPEARANCES :

On behalf of employer—Mr. P. Roy, Deputy Labour Adviser and Industrial Relation Officer.

On behalf of workmen—Mr. S. N. Chakraborty, Treasurer of the Union.

STATE : West Bengal. INDUSTRY : Port & Dock.
AWARD

By Order No. L-32012/6/86-D.IV(A) dated 6-3-1987, the Government of India, Ministry of Labour referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of the Calcutta Port Trust, in declining to record the date of birth of Shri Santu Jeswara, Porter No. 770 G.R.J under Traffic Manager, Calcutta Port Trust as 15-6-1935 on the basis of his school leaving certificate dated 21-8-1980 is justified? If not, to what relief is Shri Santu Jeswara Porter entitled?"

2. When the case is called out today, Mr. P. Roy, Deputy Labour Adviser and Industrial Relation Officer appears for the management. Mr. S. N. Chakraborty, Treasurer of the Union appears for the Union. Mr. Chakraborty files a petition stating therein that the Union is not interested to proceed with the reference and prays for a 'No Dispute Award' Mr. Roy for the Union has also submitted that a "No Dispute Award" be passed.

3. On due consideration of the petition of the Union as well as the submission of the parties, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

Dated, Calcutta,

The 9th November, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-32012/6/86-D.IV(A)/D.III(B)]

मई दिल्ली, 27 नवम्बर, 1989

का. अ. 3153.—आधोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 में अनुचरण में केवल सरकार कर्मचारी राज्य बीमा नियम कोटा के प्रबन्धसंकेत के सम्बद्ध नियोजकों और उनके कर्मचारी के बीच, अनुबंध में विस्तृ आधोगिक विवाद आधोगिक प्रधिकरण, कोटा के वंचपट को प्रकाशित करती है, जो केवल सरकार को 24 नवम्बर, 1989 को प्राप्त हुआ था।

New Delhi, the 27th November, 1989

§ O. 3153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Employees State Insurance Corporation, Kota and their workmen, which was received by the Central Government on 24-11-89.

ANNEXURE

न्यायाधीश, आधोगिक न्यायाधिकरण (केन्द्रीय) कोटा।

निर्देश प्रकरण क्रमांक : औ. अ. (केन्द्रीय) -7 मन् 1988

विवाद स्थापित: 19-12-88

प्रसंग: भारत सरकार, अम मंत्रालय के आदेश क्रमांक एन. 1510/2/11/87-री-2(बी) दिनांक 30-9-88

आधोगिक विवाद प्रधिनियम, 1947

मध्य

चौथमल सुपुत्र श्री हरिहरन, मोई मोहनला, कोटड़ी, कोटा

—प्रार्थी श्रमिक

एवं

1—मैतेजर, कर्मचारी बीमा नियम, जयपुर।

2—मैतेजर, कर्मचारी राज्य बीमा नियम, कोटा।

—प्रतिपक्षी नियोजक

उपस्थित

श्री कर्मचारी बीमा

प्रार्थी श्रमिक की ओर से प्रतिनिधि: श्री कृष्णकर (श्रीगी) एवं

श्री चौथमल (स्वयं श्रमिक)

प्रतिपक्षी नियोजक की ओर से

श्री जे. के. चम्पेल
(मैतेजर, ई. एस. आई.)

प्रधिनियम दिनांक 10 अगस्त, 1989

प्रधिनियम

भारत सरकार, अम मंत्रालय द्वारा निम्न निर्देश आधोगिक विवाद प्रधिनियम, 1947 (जिसे तत्परान्त "प्रधिनियम" से सम्बोधित किया जाता है) की धारा 10(1)(घ) एवं उपधारा (2-क) के अन्तर्गत हम स्वयं विविधकरण को प्रधिनियमर्थ सम्प्रेरित किया गया है:—

"कथा कर्मचारी राज्य बीमा नियम, कोटा के प्रबन्धसंबंध की श्री चौथमल पुत्र श्री हरिहरन की 13-7-85 से सेवा एवं भागी रहने की कार्यवाही व्यायोचित है? यदि नहीं तो उक्त कर्मचारी किसी अनुसूची का हफदार है?"

2. निर्देश के न्यायाधिकरण में प्राप्त होने पर दोनों पक्षों को सूचना प्रियवाही गयी जिस पर दोनों पक्षों ने अपनी अपनी उपस्थिति न्यायाधिकरण में दी।

3. इस प्रकरण में आज श्रमिक स्वयं श्री चौथमल मध्य अधिकृत प्रतिनिधि श्री कृष्णकर श्रीगी उपस्थिति हुआ तथा प्रतिपक्षी नियोजक की ओर से श्री जे. के. चम्पेल, मैतेजर, ई. एस. आई., कोटा उपस्थित हुए। श्रमिक चौथमल ने प्रकट किया कि प्रतिपक्षी प्रबन्धक ने उम्मीदों नीकरी पर में लिया है और आज वो इस विवाद को नहीं चलाना चाहता है अभिक को उनके प्रतिनिधि श्री श्रीगी ने उसी धैर्यालय किया। प्रबन्धक प्रतिनिधि श्री चम्पेल भी श्रमिक के कथम से सहमत हैं। इस स्थिति में यह स्पष्ट प्रकट होता है कि आज दोनों पक्षों के मध्य इस सम्बन्ध में कोई विवाद

नहीं रहा है, अब इस प्रकार में "विवाद राहत अधिनियम" पारित किया जाता है।

इस अधिनियम को भारत सरकार, अम मन्त्रालय को नियमानुसार प्रकाशनार्थ भिजाया जाये।

हस्ता ./-

कन्हेया लाल व्याम,

व्यायोग्यम्

आंदोलिक व्यायोग्यकरण (केन्द्रीय), कोटा

[म. एन. -15012/11/87-डी-2(वा)/डी.-3(वा)]

नंदा दल्ली, 28 नवम्बर, 1989

का.आ. 3154.—आंदोलिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार में, सी. बी. स्टोन वर्क्स, पाकुर के प्रबन्धनत्र के सम्बद्ध नियोगियों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट आंदोलिक विवाद में केन्द्रीय सरकार आंदोलिक अधिकारण, सं. 2, धनबद के पालपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-11-89 को प्राप्त दुष्पाता।

New Delhi, the 28th November, 1989

S.O. 3154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Cee Bee Stone Works, Pakur and their workmen, which was received by the Central Government on 27-11-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 67 of 1988

In the matter of an industrial dispute under Section 10 (1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of M/s. Cee Bee Stone Works, Pakur and their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : Shri J. D. Lall, Advocate.

STATE : Bihar

INDUSTRY : Stone Mine

Dated, Dhanbad, the 17th November, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. 29012/27/87-D.III(B) dated, the 13th May, 1988.

"Whether the action of the management of M/s. Cee Bee Stone Works, Pakur (S.P.) in removing from service Shri Sajjad Miner w.e.f. 10-6-86 is justified? If not, what relief is the workman entitled to?"

The case of the workmen is that the concerned workman Shri Sajjad Sk. was working as permanent Miner/Loader of M/s. CEE BEE Stone works Pakur. The concerned work-

man had fallen ill and was hospitalised for his treatment from 17-5-85 to 4-6-85. The concerned workman had intimated the management about his illness and had prayed for leave during the period of his treatment. After recovery from illness he reported for his duty but the management did not allow him. The management had terminated his services with effect from 10-5-86 without issuing any charge-sheet and conducting any enquiry. He was terminated without affording him any opportunity in violation of the principle of natural justice. On the above facts it is prayed that it be held that the termination of the services of the concerned workman with effect from 10-6-86 is not justified.

The case of the management is that the concerned workman was employed as miner since 1-1-79 in Stone works of the management at Pakur. He had not put in attendance of 240 days or more in any calendar year since 1979. The concerned workman absented from duty without information and without Leave since 17-5-86. The management sent notice to the concerned workman but no reply was received from him nor he reported for duty. On 7-6-86 the concerned workman was informed that since no reply was received from him he has been removed from service for absence without leave and without information for more than 10 days under clause XIV(3)(e) of the Model Standing Orders. On the above facts it is submitted on behalf of the management that the concerned workman was rightly removed from service.

Admittedly the management had not held any domestic enquiry into the charge of misconduct of absenting over 10 days without leave and permission and as such it was prayed before this Tribunal that the management may be allowed to adduce fresh evidence before this Tribunal and the same was allowed.

Now the point for decision is whether the management had rightly terminated the services of the concerned workman with effect from 10-6-86.

The management examined one witness and proved documents Ext. M-1 to M-5 series. This concerned workman or his union did not appear in this case and did not adduce any evidence inspite of Regd. notice served upon them. As such the case proceeded ex parte against the workman.

The management has examined their office clerk as MW-1. MW-1 has stated that he is looking after the pairy of this case on behalf of the management. He has produced the attendance register Ext. M-1 of M/s. CEE BEE Stone mine from 1-1-86 to 31-12-86. On perusal of the attendance register Ext. M-1 it appears that the concerned workman Sajjad Sheikh was absenting from his duty from 7-5-86 onwards without any leave. He has also proved the office copy of the notice Ext. M-2 dated 26-5-86 which was sent to the concerned workman. He has stated that the concerned workman did not reply to the said notice and did not report for his duty. MW-1 has stated that again a notice Ext. M-3 dated 2-6-86 was sent to the concerned workman and when the concerned workman did not appear or report for duty even after the said notice the services of the concerned workman was terminated. He has stated that when the concerned workman did not appear a notice dated 7-6-86 Ext. M-4 was sent to the concerned workman treating the absence of the concerned workman as voluntary abandonment from service. The above notices were sent under certificate of posting which are marked Ext. M-2 to M-5/2 MW-1 has denied that the wife of the concerned workman or any other person had informed the management about the illness of the concerned workman. From the evidence adduced on behalf of the management it is clear from the evidence of MW-1 and the attendance register Ext. M-1 that the concerned workman was absenting from his service with effect from 7-5-86 onwards for over 10 days and as such the charge of misconduct of absenting without leave or permission has been established against the concerned workman under clause XIV (3)(e) of the Model Standing Orders in respect of Industrial establishment not being industrial establishment in Coal Mines. Accordingly, I hold that the charge of misconduct under clause XIV-3(e) of the Model Standing Order has been established against the concerned workman and as such the order of dismissal passed against him appears to be justified.

In the result I hold that the action of the management of M/s. CEE BEE Stone works Pakur, S.P. in removing from service the concerned workman Shri Sajjad Sheikh with effect from 10-6-86 is justified and consequently the concerned workman is entitled to no relief.

This is my Award.

J. N. SINHA, Presiding Officer
[No. L-29012/27/87-D-III(B)]
V. K. SHARMA, Desk Officer

नई दिल्ली, 24 नवम्बर, 1989

का. आ. 3155.—प्रौद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वाई. सी. एस. की पारबेलिया कॉलियरी के एंजेट के प्रधान रानीपुर कॉलियरी के प्रबन्धसभन्न से सबद्ध नियोजकों और उनके कर्मकारों के बाच, अनुबंध में निर्दिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक प्राधिकरण कलकत्ता के पंचपट को प्रकाशित करती है, जो कर्दाय सरकार को 16 नवम्बर, 1989 को प्राप्त हुआ था।

New Delhi, the 24th November, 1989

S.O. 3155.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Ranipur Colliery under the Agent Parbelia Colliery M/s. ECL and their workmen, which was received by the Central Government on 16-11-89.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 34 of 1983

PARTIES :

Employers in relation to the management of Ranipur Colliery under the Agent, Parbelia Colliery, Post Office Dishergarh, District Burdwan

AND

Their workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty, Presiding Officer.

APPEARANCES :

On behalf of employers—Mr. B. N. Lala, Advocate.

On behalf of workmen—None.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012(7)/83-D.IV(B) dated 11th May, 1983, the Government of India, Ministry of Labour and Rehabilitation (Department of Labour) referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Management of Ranipur Colliery under the Agent, Parbelia Colliery, Post Office Dishergarh, District Burdwan in not protecting the basic wages while converted from piecemeat to time rates w.e.f. 1-5-81 in respect of S/Shri Dwarika Barhi and 35 others (as mentioned below) is justified? If not, to what relief the workmen concerned are entitled?"

List of the workmen

Sl. No.	Name	Designation
1.	Shri Dwarika Barhi	U/G Loader
2.	Shri Bichar Harijan	"
3.	Shri Abdul Rob	"
4.	Shri Nizamuddin Mia	"
5.	Shri Lachman Rajn	"
6.	Shri Mathan Bauri	"
7.	Shri Chandrika Kahar	"
8.	Shri Bhadwa Azam	"
9.	Shri Ajmul Mia	"
10.	Shri Ch. Rajaram Harijan	"
11.	Shri Nirhu Jadab	"
12.	Shri Kedar Singh	"
13.	Shri Binod Bauri	"
14.	Shri Ananta Dey	"
15.	Shri Ram Kumar Harijan	"
16.	Shri Lal Deo Harijan	"
17.	Shri Bhatoor Mahto	"
18.	Shri Sah Mohammad	"
19.	Shri B. Sukhamad Saw	"
20.	Shri Hadu Dusadh	"
21.	Shri Sanichar Mahto	"
22.	Shri Chotam Mahto	"
23.	Shri Manik Bauri	"
24.	Shri Jamna Bhuiya	"
25.	Shri Bolai Muru	"
26.	Shri Ram Golam Harijan	"
27.	Shri Kailoo Tanti	"
28.	Shri Dukhu Barhi	"
29.	Shri Raghubansh Harijan	"
30.	Shri Pradeshi Harijan	"
31.	Shri Akhil Saw	"
32.	Shri Rohan Majhi	"
33.	Shri B. Mohammad Mia	"
34.	Shri Ch. Moti Harijan	"
35.	Shri Jagjit Kuiri	"
36.	Shri Gaffur Mia	"

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the Management but nobody appeared for the workmen. A petition has however been received from the Union stating therein that the Union is not interested to proceed with the reference. The Union has prayed for a "No Dispute Award". Mr. Lala has also submitted that a "No Dispute Award" be passed.

3. On due consideration of the petition of the Union as well as the submission of Mr. Lala for the management, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

The 6th November, 1989.

Dated, Calcutta,

The 6th November, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-19012(7)/83-D.IV.B/IR(C. II)]

का. आ. 3156.—प्रौद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बेस्टर्स कॉलीफील्ड्स प्रिंसिपलियरी के प्रबन्धसभन्न से ममवद्य नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्धारित प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक प्राधिकरण से 1, यम्बई, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-89 को प्राप्त हुआ था।

S.O. 3156.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 1, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Sasti Colliery of M/s.

Western Coalfields Ltd. and their workmen, which was received by the Central Government on 16-11-89.

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY**

Reference No. CGIT-18 of 1989

PARTIES :

Employers in relation to the management of M/s. Western Coalfields Ltd. (Sasti Colliery)

AND

Their workmen.

APPEARANCES :

For the Management—Mr. P. S. Nair, Advocate.
For the Workmen—No appearance.

INDUSTRY : Mining

STATE : Maharashtra

Bombay, dated the 3rd day of November, 1989

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Sasti Colliery of M/s. Western Coalfields Ltd. in terminating services of Sheikh Nazir son of Sheikh Vazir, Driver w.e.f. 19-4-1983, is justified? If not, to what relief the workman concerned is entitled?"

2. The workman did not file any statement of claim nor was any statement of claim filed by the Rashtriya Koyalak Khadan Mazdoor Sangh (INTUC), Chandrapur, the Union which espoused his cause.

3. The management however filed its statement of claim contending inter-alia that the services of the workman were not terminated by the management, but he was treated as deserter, he having terminated the contract of his service of his own accord within the meaning of Standing Orders 9(D). The parties however, have settled the dispute amicably, with a view to build up harmonious industrial relations as stated in the preamble to the memo of settlement on the following terms:

1. It is agreed that Shri Sheikh Nazir S/o Sheikh Vazir will be reinstated as Driver Cat. V.
2. It is agreed that neither Union nor workman will claim any back wages/monetary benefit whatsoever for the period from the date of desertion to the date of joining of his duty.
3. It is agreed that the Idle period i.e. from the date of desertion to the date of joining of Shri Sheikh Nazir S/o Sheikh Vazir after settlement will be treated as dies-non i.e. no work no pay.
4. This fully and finally resolves|settles the case.
5. Both the parties shall file this settlement before the CGIT No. 1, Bombay for consent Award"
4. The settlement obviously is in interest of the workman as he is to be reinstated in service. I, therefore, accept the settlement and pass an award accordingly.

M. S. JAMDAR, Presiding Officer
[No. L-22012(170)/88-D.IV.B/IR(C. II)]

और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में कल्पनाय सरकार औद्योगिक विवादिकारण कलकाता के पंचपट का प्रकाशित करता है, जो कल्पनाय सरकार को 16-11-89 को प्राप्त हुआ था।

S.O. 3157.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management Pandaveswar Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on 16-11-89.

**ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA**

Reference No. 44 of 1984

PARTIES :

Employers in relation to the management of Pandaveswar Colliery of ECL

AND

Their workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty.—Presiding Officer.

APPEARANCES :

On behalf of employer.—Mr. P. Banerjee, Advocate.
On behalf of workmen.—Mr. Rajdeo Singh, General Secretary of the Union.

STATE : West Bengal

INDUSTRY : Coal.

AWARD

By Order No. L-19012(23)84-D.IV(B) dated 11th September, 1984, the Government of India, Ministry of Labour & Rehabilitation (Department of Labour) referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of Pandeswar Colliery of ECL in striking off the name of Smt. Rajia Devi from the rolls on 1-4-75 without issuing a charge-sheet to hear and without conducting domestic enquiry, is justified? If not to what relief the workman concerned is entitled?"

2. The case as made out in the written statement by the Union sponsoring the cause of the concerned workman Smt. Rajia Devi is briefly as follows : Rajia Devi the concerned workman was employed in the Pandeswar Colliery as a Wagon Loader Kamin since 1963 and was working regularly upto 1974. In the last quarter of 1974 Rajia Devi became sick due to mental disorder. She was taken to Ranchi Manasik Arogyasala on 1-1-1975 and there she was under the treatment of Dr. Md. Ekram Jalil, Deputy Superintendent of the Arogyasala upto 31-1-1982. The information of her sickness was conveyed to the Loading Superintendent of the colliery by her co-worker as such was the practice for illiterate Wagon Loaders.

3. After recovery the concerned workman reported for duty with the medical fitness certificate to the Loading Suptd. but she was not allowed to join. She then submitted an application to the General Manager on 24-3-1982 enclosing therewith the photostat copy of the medical certificate but to no effect. She then made her second representation to the Personnel Manager in December 1983 but her case was not considered. The concerned workman then approached the Union which raised the dispute before the Conciliation Officer. The failure report of the Conciliation Officer resulted in the present reference. The management was not justified in striking off her name from the roll with effect from 1-4-1975 without giving her any notice and any charge-sheet. The concerned workman accordingly has claimed for reinstatement to the service with all consequential benefits.

4. The case as made out by the employer Colliery in the written statement is briefly as follows : The concerned workman was employed at Pandaveswar Colliery in November 1972 as a Casual Wagon Loader. In none of the years after her employment the concerned workman worked for 240 days in a calendar year. The concerned workman was not found available in the colliery since 1-1-1975 for casual employment. Accordingly her name was dropped from the roll and an entry to that effect was made in the B From Register. The employer accordingly had no obligation to issue any charge-sheet or conduct any domestic enquiry before striking off her name from the rolls of the colliery. The employer has denied that the concerned workman was employed in 1963 and that since then she was working as a regular workman. According to the employer there was no official post of Loading Suptd. in the colliery at the relevant time. The giving of any intimation to the Loading Suptd. of the colliery about the sickness of the concerned workman has been denied. The General Manager or the Personnel Manager had no obligation to consider the application and representation of the concerned workman if it be found that such application and representation were made by the concerned workman alongwith the medical certificate. According to the employer the name of the concerned workman was struck off from the rolls because of her non-availability in the colliery since 1-1-1975. The concerned workman is accordingly not entitled to any relief.

5. Both sides have adduced evidence. WW-1 is the concerned workman Rajia Devi. She has stated in her evidence that she worked as Wagon Loading Kamin in the Pandaveswar Colliery from 1963 to 1974 regularly and that in the last quarter of 1974 she suffered from unsoundness of mind and that for a few days she received treatment in the colliery itself. Her evidence further shows that from 1-1-1975 to 30-1-1982 she was at Ranchi Manasik Arogyasala and received treatment there. This evidence of WW-1 Rajia Devi has not been controverted either in cross-examination or through the evidence of employer's witness MW-1 Bishnupada Mitra who was the Loading Clerk in Pandaveswar Colliery, and who is the only witness on the side of the employer.

6. WW-1 Rajia Devi has further stated in her evidence that after recovering from her illness she sent three or four applications to the Colliery seeking permission to resume her duty and that she was not given any reply. Her evidence further discloses that in 1982 she personally reported for duty at the colliery with medical certificate but she was not allowed to join in her work. This evidence of WW-1 Rajia Devi has also not been controverted either in her cross-examination or through the evidence of employer's aforesaid witness. The written statement filed by the Union on behalf of the concerned workman has specifically mentioned about the concerned workman's approach to the colliery with medical certificate for joining in her duty and about the workman's application to the General Manager with medical certificate and subsequent representation to the Personnel Manager for allowing her to join in duty. Such statement of the union on behalf of the concerned workman has not been denied in the written statement filed on behalf of the employer.

7. The evidence of WW-3 Brahmdeo Paswan who was formerly a workman in the Pandaveswar Colliery where Rajia Devi was also a workman and whose quarter was at Pandaveswar, shows that Rajia Devi became insane in 1974 and that he and one Gurucharan Paswan along with a relative of Rajia Devi, took Rajia Devi to Ranchi Manasik Arogyasala. Employer's witness MW-1 Bishnupada Mitra has admitted in his evidence that after a few years since the name of Rajia Devi was struck off from the workers list, he heard that Rajia Devi became insane from the talk among some workmen. It is therefore clear that some official of the employer colliery also knew the fact of insanity of the concerned workman.

8. In view of the discussion of the aforesaid evidence with reference to the respective written statements, it is found that the concerned workman Rajia Devi became insane in the end of 1974 and that she was sent to Ranchi Manasik

Arogyasala and that she was under treatment there upto January, 1982.

9. The employer has come with the statement that the concerned workman Rajia Devi was a Casual Worker since her employment and that she was so when her name was struck off from the workers list. It may be mentioned here that the employer has not denied the fact that the name of the workman was struck off from the roll of with effect from 1-4-1975 as mentioned in the schedule to the reference and also in the written statement filed by the union. The identity card Ext. W-1 produced by the union however shows the permanent status of the concerned workman as a worker in the colliery concerned. Accordingly the plea of the employer that the concerned workman was a mere casual worker does not stand. Rajia Devi as a permanent Wagon Loader Kamin had no doubt her right to the substantive post. There is no dispute to the principle of law that even a permanent workman can abandon the service and can be treated as a workman who has voluntarily abandoned her service and in that case the employer is under no obligation to issue any charge-sheet or to hold any enquiry for treating such workman as the workman who has abandoned the service and for striking off the name of such workman from the workers' roll. The question here is whether the concerned workman abandoned her service so that her name could be struck off from the workers' roll by the employer with effect from 1-4-1975 or from any other subsequent date.

10. There is no dispute to the fact that the concerned workman remained absent from duty from 1-1-1975 or even from her ailment from mental disorder in the last quarter of 1974. According to the management the concerned workman remained absent from duty without taking any leave or without giving any intimation to the appropriate authority of the colliery. The workman concerned on the other hand has come with the story that the intimation of her sickness from mental disorder was verbally communicated to the Loading Clerk or Suptd. as the case may be. Rajia Devi (WW-1) has stated in her evidence that her relations informed the Loading Clerk about her illness. WW-3 Brahmdeo Paswan has stated in his evidence that he himself informed the Loading Clerk Bishnubabu about the sickness of Rajia and about her leave. WW-2 Bishnandeo Paswan has stated in his evidence that at the relevant time it was the practice for the illiterate workman to take leave by oral intimation. WW-3 also has given evidence to that effect. MW-1 Bishnupada Mitra has however denied that WW-3 Brahmdeo Paswan intimated him about the sickness of Rajia and about her leave, although WW-3 Brahmdeo Paswan has stated in his evidence that he himself intimated Bishnubabu (MW-1) in this respect. Be that as it may it has already been shown that Bishnupada Mitra (MW-1) knew about the insanity of Rajia Devi from some workmen after a few years of her insanity. The facts as discussed above go to show that Rajia Devi remained absent from duty for a number of years upto January, 1982 because of her illness from insanity and because of her treatment in the Ranchi Manasik Arogyasala for such ailment.

11. In the case of Babasaheb Devogonda Patil vs. The Managing Director, Panchgondi Sahakari Sakhar Karkhana Ltd. reported in 1988 Lab. I.C. 1282 it has been held that long and continuous absence for years together without any reason or justification whatever and without anything more can, give rise to an inference of abandonment of service. In the instant case the long and continuous absence for years together of Rajia Devi from her duty in the colliery is not without reason or justification. The evidence and the materials in the record have shown that Rajia Devi had the reason and justification for her absence from duty from January, 1975 to January, 1982. Such being the position, the said long and continuous absence for years together do not constitute the abandonment of her service in the eye of law. Further it appears that the management did not make any enquiry whatsoever by issuing any letter to the concerned workman at her home address to know whether the long absence of the concerned workman from duty without any reason or justification. It is expected from the employer to make an enquiry in this respect at least by sending the letter to the absentee workman and intimating her that her prolonged absence without any reason or justification would be treated as abandonment of service. The

employer in the instant case did not take any such step. It appears that after silent waiting for three months, the employer struck off the name of the concerned workman from the workers' roll with effect from 1-4-1975 on their own whims and arbitrary action. The facts and circumstances as discussed above and the materials in the record do not establish that the concerned workman abandoned her service voluntarily. The materials in the record have however shown that the concerned workman because of her sickness from insanity was compelled to remain absent from duty for a number of years and that she was under treatment in the Ranchi Manasik Arogyasala during such long period.

12. It has already been shown that there is no dispute to the fact that the concerned workman approached the colliery with medical fitness certificate in 1982 and requested for her reinstatement to the service and that her request was turned down. The written statement filed on behalf of the employer has on the other hand mentioned that the management was not under any obligation to consider the representation of the concerned workman for reinstatement to her service. It is a matter of request that the management under whom the concerned workman worked for so many years did not make any consideration even about her representation. The management in the facts and circumstances as mentioned above has not been justified in striking off the name of the concerned workman from the workers' roll and in not giving her the opportunity of joining in her duty on the basis of the medical certificate produced before the management.

13. Now the question comes from which date the concerned workman should be reinstated to her service. The union has not produced any document or paper before the Tribunal to show on which date actually the concerned workman approached the employer or submitted the representation or application for reinstatement to the service, although some statement has been made in the written statement in this respect. The union could have produced the documentary evidence in this respect to show on which date the management received the application or representation of the concerned workman. It is true that the concerned workman has stated in her evidence that in 1982 she personally reported for duty in the colliery with medical certificate. In the absence of any documentary evidence in support of the same and in view of the peculiar facts and circumstances of the present case showing that the concerned workman made the representation to the personnel Manager in December, 1982 praying for her reinstatement to the service, I think that the ends of justice would be met if the concerned workman is ordered to be reinstated from 1st January 1983 with all her service benefits from that date.

14. In the result the concerned workman Rajia Devi be reinstated to her service with effect from 1-1-1983 with all service benefits from that date.

This is my Award.

Dated, Calcutta,

The 3rd November, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer

[No. L-19012(23)/84-D IV.B/IR(C-ID)]

का. प्रा. 3158.—मीदोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रमुखरूप में, केन्द्रीय सरकार व भैमसे स्टिन कोलफील्ड लि., की पारस्परिय कीलियारी के प्रबन्धन से संबद्ध नियोजकों और उनके कर्मकारों के द्वारा, प्रत्यंग में तिरिच्छ आदोगिक विवाद में केन्द्रीय सरकार औदोगिक प्रधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-89 को प्राप्त कुमा था।

S.O. 3158.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure

in the industrial dispute between the employers in relation to the management of Parbelia Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 16-11-89.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 43 of 1983

PARTIES :

Employers in relation to the management of Parbelia Colliery of Messrs Eastern Coalfields Limited, Post Office Noutoria, District Purulia.

AND

Their workmen

PRESENT :

Mr. Justice Sukumar Chakravarty—Presiding Officer.

APPEARANCES :

On behalf of employers—Mr. B. N. Lala, Advocate.

On behalf of workmen—None.

STATE : West Bengal.

INDUSTRY : Coal

AWARD

By Order No. L-19012(8)/83-D.IV(B) dated 11th July, 1983, the Government of India, Ministry of Labour & Rehabilitation (Department of Labour) referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Parbelia Colliery of Messrs Eastern Coalfields Limited, Post Office Neutoria, District Purulia in treating Shri Ramsubha Keot and others listed below, Clay Cartridge Mazdoors as piecered workmen Group-I and in paying the monthly fixed minimum wages for Group-I without relating their work to production is justified ? If not to what relief the workmen are entitled and from what date ?

List of the workmen

1. Shri Bhagwan Saw
2. Smt. Nadibala Mallick
3. „ Runa Devi
4. „ Jatani Devi
5. „ Gulabi Devi
6. „ Kamala Devi
7. „ Sulefan Bebi
8. „ Sakina Bibi

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the Management but nobody appears for the workmen. A petition has however been received from the Union stating therein that the Union is not interested to proceed with the reference. The Union has prayed for a "No Dispute Award". Mr. Lala has also submitted that a "No Dispute Award" be passed.

3. On due consideration of the petition of the Union as well as the submission of Mr. Lala for the Management, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

Dated, Calcutta,

The 6th November, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer

[No. 19012(8)/83-D.IV-B/IR(C-ID)]

का. प्रा. 3159.—मीदोगिक विवाद अधिनियम, 1947 (1947 का 14) के प्रमुखरूप में, केन्द्रीय सरकार व स्टिन कोलफील्ड लि.,

की भानोरा कॉलियरी के प्रबन्धतंत्र से संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निविष्ट धौधोंगक विवाद में केन्द्रीय सरकार धौधोंगक अधिकारण कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-11-89 को प्राप्त हुआ था।

S.O. 3159.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhanora Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 17-11-89.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 4 of 1987

PARTIES :

Employers in relation to the management of Bhanora Colliery of M/s. Eastern Coalfields Ltd. P. O. Charanpur, Dist. Burdwan

AND

Their Workmen

PRESENT :

Mr. Justice Sukumar Chakravarty—Presiding Officer.

APPEARANCES :

On behalf of workmen—None.

On behalf of employers—Mr. B. N. Lala, Advocate.

STATE : West Bengal

INDUSTRY : Coal

AWARD

By Order No. L-19012(46)/86-D.IV(B) dated 29th December, 1986, the Government of India, Ministry of Labour referred the following dispute to this Tribunal for adjudication:

"Whether the management of Bhanora Colliery of M/s. E.C. Ltd. P.O. Charanpur, Dist. Burdwan was justified in stopping Smt. Surojmoni Mahali, Wagon Loader from work with effect from 22-11-80 was justified? If not, to what relief the workman concerned is entitled?"

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the Management but nobody appears for the workmen. A petition has however been received from the Union stating therein that the Union is not interested to proceed with the reference. The Union has prayed for a "No Dispute Award". Mr. Lala has also submitted that a "No Dispute Award" be passed.

3. On due consideration of the petition of the Union as well the submission of Mr. Lala for the Management I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

Dated. Calcutta.

The 8th November, 1989

SUKUMAR CHAKRAVARTY, Presiding Officer
INo. L-19012(46)/86-D.IV(B/IR(C-II))

नहीं चिह्नी, 27 नवम्बर, 1989

फा. ना 3160—धौधोंगक विवाद अधिनियम, 1947 (1947 का 14) की घास 17 के अनुसार में, केन्द्रीय सरकार उक्त अधिनियम

का घास 33-A के प्रस्ताव सर्वदी ग्रामिणाम व मर्त्ताउर लक्ष्मान हारा निधा कोलियरी मैनेजर ई. सी. लि. के प्रबन्धतंत्र में संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निविष्ट धौधोंगक विवाद में केन्द्रीय सरकार सीधोंगक अधिकारण कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21 नवम्बर, 1989 को प्राप्त हुआ था।

New Delhi, the 27th November, 1989

S.O. 3160.—In pursuance of section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta in respect of a complaint u/s 33A of the said Act filed by S/Sri Ram Bilash and Matiur Rahaman Khan, Pit Clerks of Ningah Colliery of M/s. Eastern Coalfields Ltd., PO-Kalipahari, Distt. Burdwan against—(1) Agent, Ningah (R) Colliery of Eastern Coalfields Ltd., P.O. Kalipahari, Dist. Burdwan and (2), Chairman-cum-Managing Director, E.C. Ltd. Sanctoria, PO Dishergarh, Distt. Burdwan, which was received by the Central Government on 21st November, 1989.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Application No. 3 of 1985 U/S 33A of the Industrial Disputes Act, 1947.

(Arising out of Reference No. 48 of 1958)

PARTIES :

S/Sri Ram Bilash and Matiur Rahaman Khan, Pit Clerks of Ningah Colliery of M/s. Eastern Coalfields Ltd., P.O. Kalipahari, Distt. Burdwan

Applicant

Vs.

(1) The Agent, Ningah (R) Colliery of Eastern Coalfields Ltd., P.O. Kalipahari, Distt. Burdwan.

(2) Chairman-cum-Managing Director, Eastern Coalfields Ltd., Sanctoria, P.O. Dishergarh, Distt. Burdwan

—Opp. Party.

PRESENT :

Mr. Justice Sukumar Chakravarty—Presiding Officer.

APPEARANCES :

On behalf of Applicant—None.

On behalf of Opp. Party—Mr. B. N. Lala, Advocate.

STATE : West Bengal

INDUSTRY : Coal

AWARD

This is an application under section 33A of the Industrial Disputes Act, 1947.

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the Opp. Party. Nobody appears for the Applicant inspite of receipt of the notice. No petition has also been received from the Applicant for adjournment. Mr. Lala for the Opposite Party presses for the dismissal of the application.

3. It appears from the record that in the past also the applicant remained absent and on some occasions the applicant took adjournments by sending applications. The present application under section 33A of the Industrial Disputes Act, 1947 has been pending from 1985. It appears from the conduct of the applicants that they are not interested to proceed with the application. In the circumstances the applica-

tion under section 33A of the Industrial Disputes Act, 1947 is dismissed for default.

This is my Award.

Dated, Calcutta

The 10th November, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-22013(1)/89-IR(C-II)]

का.आ. 3161--श्रीवैष्णव विवर अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसार, केंद्रीय सरकार व यिहारी भवणिया, मिशन कोलिंग फि ग्रेलिंग के प्रबन्धनवाले मे पांडे नियोजनी और उनके कर्मजों के द्वारा आत्म मे नियित पांडे विवाद मे केंद्रीय सरकार और्सांगीक अधिकारी, जबलपुर के पांडे की प्रक्रिया करती है, जो केंद्रीय भारत को 23-11-89 प्राप्त हुया था।

S.O. 3161.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bijuri Sub Area, PO Bijuri, Colliery, Distt. Shahdol and their workmen, which was received by the Central Government on 23-11-89.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LAOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(R)(126)1987.

PARTIES :

Employers in relation to the management of Bijuri Sub-Area, P.O. Bijuri Colliery, District Shahdol and their workmen S/ Shri Ramanand Pandey and Ram Gopal Kewat, Ex-Casual Workers of Bijuri Colliery represented through the M. P. Kolya Mazdoor Sabha (HMS), Hasdeo Area, P.O. South Jharkhand Colliery, District Surguja (M.P.)

APPEARANCES :

For Union.—Shri N.L. Pandey.

For Management.—Shri G.K. Prasad and Shri B.N. Prasad.

INDUSTRY.—Coal Mining.

DISTRICT.—Shahdol (M.P.)

AWARD

Dated : November 15, 1989.

This is a reference made by the Central Government Ministry of Labour, under Sec. 10(1) (d) & (2A) of the I.D. Act, 1947, vide its Notification No. L-21011/4/87-D.III(B) dated 15-7-1987, the adjudication of the following dispute :—

"Whether the termination of Shri Ramanand Pandey and Shri Ram Gopal Kewat, Ex-Casual Workers of Bijuri Colliery by the Management of Sub-Area, Manager Bijuri Sub-Area Post Bijuri Colliery, Dist. Shahdol vide letter No. BJ/SAM/TERMS/84/ 4555-61 & 4548-54 dated 24/25-7-1984 is justified? If not, to what relief the workmen are entitled for?"

2. Undisputed facts of the case are that the workmen were appointed on 24-8-1983 as casual workers (Mazdoor) vide Order Nos. BJ/SAM/Aptt. 11244 and 11124. It is also not disputed that the said workmen have worked for 256 and 255 days respectively. It is also not disputed that their services were terminated vide letter No. BJ/SAM/TERMS/ 84/4555-61 and 4548-54 dated 24/25 July 1984 as no longer required.

3. The case of the workmen is that they had completed the vocational training and for the purpose of their wage they were placed in Category I of N.C.W.A.-II. Within a short period they were given the work of Trippler Trammer in time rated category in under-ground and they had to work inside the mines. This is the work of Category-III as per Wage Board Recommendation for Coal Mines, 1967, but they had been paid the Wage of Category-I. At the time of appointment a selection list was prepared and the names were called from the Employment Exchange, Shahdol by the management. Vacancies were approved by the management according to the requirement of the work.

4. The workmen were engaged in permanent nature of job continuously for a period of one year and completed 190 days attendance in under ground for the purpose of Section 25-B of the I.D. Act. But the management without assigning any reason has terminated the employment of the workmen as no longer required.

5. Though the appointment order of the workmen was issued for a period of one month, they had continued to work for more than eleven months. Along with the workmen a number of other workmen were also employed. Other workmen were also employed after the present workmen were given the job.

6. The nature of the work the workmen were assigned was not of casual nature and according to the definition of a permanent workman, a permanent workman is one, who is appointed for a coalmine and/or who has put in six months satisfactory continuous service. They having worked continuously for more than six months and other workmen who were appointed similarly with them having been regularised, their terms of employment and nature of job could not be treated as casual in nature. According to S.O. No. 13 of the said Coalfields Standing Orders a notice of one month in writing with reasons and one month's wages thereof shall be given by the employer before terminating the services of the workman. No. such notice of any kind has been given to the workmen concerned before terminating their employment. The management has adopted pick and choose policy to regularise the services of the workers who are

similarly situated and having terminated the services of these workmen without assigning any reason amounts to unfair labour practice by the management which is prohibited under Sec. 25-T of the I.D. Act. As the capital of the management vests in the Government the termination of the services of the workmen is violative of Articles 14 and 16 of the Constitution. The workmen are, therefore, entitled to reinstatement with all back wages and other benefits with costs.

7. According to the management the workmen were appointed purely as casual workers under the terms of contract of employment. Their services were liable to be terminated at any time even otherwise and stood terminated on 30-9-1983, but due to oversight they continued to be in service.

8. The present workmen indulged in violent activities and on 22-7-1984 they assaulted Shri P Pawan Kumar Nagal, Junior Executive Trainee (Mining), Bijuri Colliery. The criminal case was registered against them and is pending till now. Since the appointment of the workmen was purely casual in nature and they were continuing without any appointment letter or authority due to oversight it was not left necessary that a departmental enquiry etc. should be conducted. It was also not expedient in the circumstances of the case to hold departmental enquiry. Hence the management was left with no option but to terminate them from service.

9. The management has denied that the workmen were given the work of Frippler Trammer in time rated category in underground. Management has also denied that they were doing the work of Category III as per Wage Board Recommendations. They were, however, doing only Category-I work. They were never engaged in a permanent nature of job as alleged. Their termination does not amount to retrenchment. The action taken by the management is proper and therefore the workmen are not entitled to any relief whatsoever.

10. My learned predecessor, Shri V.S. Yadav, vide his order dated 22nd March, 1988 held that the management is not entitled to lead evidence before the Tribunal in the facts and circumstances of this case. An application to this effect was moved that the management be permitted to lead evidence to prove the misconduct of the workmen on 3-6-1988 but this application was also rejected vide my predecessor's order dated 3-6-1988 on the ground that this point has already been decided hence the management was not permitted to lead any evidence on the matter of misconduct of the workmen.

11. No evidence has been led in this case and the documents on record have neither been admitted by the parties nor have been proved otherwise. Thus we have to decide this case on the basis of the facts admitted before this Court.

12. I have already pointed out above that it is not disputed that the workmen Shri Ramanand Pandey and Shri Ram Gopal Kewat had completed 240 days continuous service as defined under Sec. 25-B(2)(a)(ii) of the I.D. Act and as such the

provisions of Sec. 25F are attracted in this case. Even a temporary or casual employee would fall within the ambit of "workman" as defined under Sec. 2(s) of the I.D. Act. Thus every workman employed in an industry irrespective of his status, temporary, permanent, casual or probationer would be a "workman" under the I.D. Act (See the Law of Industry Dispute by O.P. Malhotra, Fourth Edition Vol. I at page 467).

13. It has been said that the services of these workmen were for a particular period which came to an end by efflux of time and due to oversight the employees continued to be in service. In this regard I have to say that termination..... for any reason whatsoever in Section 2(oo) are the key words. Whatever the reason every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart the substance is decisive. A termination takes place where a term expires either by active steps of the master or the running out of the stipulated term to write into an order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to section 25F(a). But in this case the workmen were in the industry for a continuous service for no less than one year (State Bank of India Vs. N. Sunderamoney AIR 1976 SC 1111 Para 9 of the judgment). Thus whatsoever may be the reason the services of the workmen could not be terminated without complying with the provisions of Section 25F of the I. D. Act. Nothing has been shown to me that by virtue of continuous service for 6 months, these workmen got the permanent status.

14. The workmen have satisfied both the eligibility qualifications prescribed in Section 25F for claiming retrenchment compensation. It has also been established that their case is not covered by any of the exempted or excluded categories and have rendered continuous service for one year. Therefore termination of service would constitute retrenchment. As the pre-condition of a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. They must therefore, be deemed to be in service (Mohan Lal Vs Management of Bharat Electronics Ltd. AIR 1981 SC p. 1253). I need not deal with other aspects of the case for want of evidence.

15. So far the consequential benefits are concerned, in the particular circumstances of this case the workmen would not be entitled to any consequential benefits. Reference is, therefore, answered as follows:—

- (1) The termination of Shri Ramanand Pandey and Shri Ram Gopal Kewat, Ex-casual workers of Bijuri Colliery by the management of Sub-Area Manager, Bijuri Sub-Area, Post Bijuri Colliery, District Shahdol vide letter No. BISAM/TERMS/84/4555-61 & 4548-54 dated 24/25-7-84 is not justified.
- (2) In the particular facts and circumstances of this case the workmen concerned shall be put back where they left off and they would be deemed to be in continuous service with-

out any consequential benefits upto the date of reference.

Awarded accordingly. No order as to costs.

V. N. SHUKLA, Presiding Officer.

[No. L-210114/87-D.III.B]IR(C.II)]

R. K. GUPTA, Desk Officer.

नई दिल्ली, 24 नवम्बर, 1989

का. आ. 3162.—प्रीर्वांगिक विवाद अधिनियम, 1947 (1947 पा. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबन्धनातंत्र के नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट श्रीरांगिक विवाद में केन्द्रीय सरकार श्रीरांगिक प्रधिकारण, चंडीगढ़ के पंचपट को प्रकाशित वर्तमान है, जो केन्द्रीय सरकार का 21 नवम्बर, 1989 को प्राप्त हुआ था।

New Delhi, the 24th November, 1989

S.O. 3162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby published the following award of the Central Government Industrial Tribunal Cum-Labour-Court Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Patiala and their workmen which was received by the Central Government on 21-11-89.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 46/86

PARTIES :

Employers in relation to the management of State Bank of Patiala.

AND

Their workman : Gurmit Singh.

APPEARANCES :

For the workman—Shri T. C. Sharma.

For the management—Shri P. S. Arora.

AWARD

Dated the 24th October, 1989

On a dispute raised by Gurmit Singh against the management of State Bank of Patiala, Central Govt. had vide No. L-12012/19/86-D. II(A) dated 6-6-1985 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of State Bank of Patiala, in relation to its Mustafabad Branch, in dismissing from service Shri Gurmit Singh, Daftry with effect from 28-12-1984 is justified ? If not, to what relief is the workman entitled?"

2. Case of the petitioner as set out in the claim statement is that Gurmit Singh petitioner was working as daftri at Mustafabad branch of the respondent Bank when he was served with a charge sheet dated 12-1-1984 to which he submitted reply dated 10-8-1984. The management without considering the reply appointed an inquiry officer and on the basis of the inquiry report, issued show cause notice dated 5-9-1984 with the proposed punishment of dismissal. The Regional Manager-I acting as Disciplinary authority passed dismissal order dated 28-1-1984 and dismissed the workman with immediate effect. The petitioner contends that the order of dismissal is illegal for the reason (i) disciplinary proceedings were not initiated by the competent authority; (ii) the inquiry officer was not properly appointed (iii) the inquiry was not held in accordance with the provisions of Bipartite Settlement (iv) notice under para 18 : 20 of the Desai Award

was not displayed on the notice board of the branch; (v) workman was neither allowed assistance of the representative nor opportunity to lead defence; (vi) the disciplinary authority which did not apply its mind has used the preliminary enquiry to penalise him. It is also contended that bank has awarded lesser punishment in a number of cases where employees were involved in serious cases but the workman has been dismissed for alleged fraud of few hundreds only

The management in its answer Icd, has stated that Gurmit Singh workman while working as daftri at Mustafabad branch of the Bank had fraudulently withdrawn funds from the saving Bank account of a deceased depositor. The workman tampered with the Bank's record by destroying the account opening form and S. S. Card of the account holder Sant Sadhu Singh and in its place induced fresh specimen signatures card and account opening form bearing forged signatures of the depositor. Respdt. Bank had conducted the domestic inquiry as per rules and regulations applicable to the Bank employees and Gurmit Singh workman was dismissed from service after holding proper departmental inquiry in which the workman had participated and voluntarily admitted the charges against him unconditionally. Along-with the written statement the management filed copy of Circular No. PE 170 of 1982 dated 18-9-1982 indicating Regional Manager as disciplinary authority of the employees in the category of Gurmit Singh. Management also filed copy of the inquiry proceedings dated 20-7-1984 which discloses that instead of cross-examining the witnesses, Gurmit Singh workman admitted the charges against him unconditionally. In addition to this, management also filed photostat copy of the letter sent to the workman calling upon him to submit his final reply to the show cause notice dated 5-9-1984 or to avail of personal bearing alongwith representative. The management contends that appointment of the inquiry officer was made by the competent authority, and inquiry proceedings were held as per provisions of the Desai Award/Bipartite Settlement

4. Parties were allowed opportunity to lead evidence in support of their respective claims. Gurmit Singh workman filed affidavit Ex. W1 reiterating the allegations made in the claim petition. During his cross-examinations admitted that he had filed reply to the charge sheet served upon him and he attended all the inquiry proceedings which bears his signatures. In rebuttal the management examined Sampuran Singh as MW1 who was then working as officer in the disciplinary action cell. Shri Sampuran Singh made statement that he had prepared the draft of the charges on the basis of the record and placed the same before the Regional Manager, Chandigarh on the basis of the same, draft charge sheet was served Shri Paithaman Singh Inquiry Officer in this case, appeared as MW2 and made statement that inquiry proceedings Ex. M1 to M6 which bear his signatures were also signed by the workman without any threat or pressure. During his cross-examination he made statement that he had allowed two opportunities to the workmen to nominate his authorised representative but the workman preferred to conduct the case himself. Management also filed affidavit Ex. M 11 of Shri J.S. Bakshi the then Branch Manager State Bank of Patiala Mustafabad branch who solemnly affirmed that he had reported to the Regional Manager vide letter No. 131 dated 18-1-1983 that Shri Gurmit Singh, Daftri tampered with the branch record by substituting the account opening form and S. S. Card of Sant Sadhu Singh son of Shri Sant Sham Singh and also withdrew fraudulently a sum of Rs. 827 through withdrawal form dated 14-9-1982 bearing forged signatures of the said depositor who had reportedly expired during October 1981. He has further averred that Gurmit Singh of his own had admitted in his letter dated 17-1-1983 having withdrawn the said amount of Rs. 827 on 14-9-1982. During his cross-examination Shri Jaspal Singh Bakshi made statement that he did not witness the workmen tampering with the Bank record or receiving payment of Rs. 827.

5. Evidence on the file shows that Gurmit Singh workman was served with detailed charge sheet to which he filed reply. He attended the inquiry proceedings throughout after initial reluctance and did not prefer to avail services of any representative or lending any evidence in defence as he made voluntary confession vide letter dated 17-1-1983 (Ex. M7)

placed in original on this file stating that he had destroyed the account opening form and S. S. Card of Sant Sadhu Singh deceased and substituted the same with forged documents. He also admitted in his own hand to have withdrawn Rs. 827 from account No. 516 of Sant Sadhu Singh. Perusal of the inquiry proceedings held on 20-7-1984 (copy Ex. M4) which bears signatures of Gurmit Singh in token of having received copy of the proceedings recorded on that day discloses that he had not only made confession of the charges before the inquiry officer but also admitted to have deposited the amount in question. He had stated in clear terms that he accepts the statement of Jaspal Singh before the inquiry officer and does not want to lend any evidence in defence. It is clear out case of forging of bank documents and fraudulent misappropriation on the part of the bank employee who destroyed the bank record by substituting account opening form and S. S. Card of a depositor who had recently died. Workman withdrew of Rs. 827 fraudulently from the saving Bank account No. 516 of Sant Sadhu Singh on the basis of forged withdrawl vouchers and when this crime was detected, he deposited the said amount in the saving bank account No. 516 of the account holder. The inquiry held against Gurmit Singh workman does not suffer from any legal infirmity. The reference is therefore, returned with the findings that action of the management of State Bank of Patiala in dismissing from service Shri Gurmit Singh Daftari Mustafabad branch with effect from 28-12-1984 is justified and Gurmit Singh workman is not entitled to any relief.

Chandigarh.

24-10-1989.

M. S. NAGRA, Presiding Officer
[No. L-12012/19/86-D.II(A)]

का. आ. 3163--प्रोत्येकित विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, रेटेट बैंक आफ मैसूर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुकूल में निर्दिष्ट श्रीवोगिक विवाद में केन्द्रीय सरकार और श्रीवोगिक अधिकरण, वैगलूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23 नवम्बर, 1989 को प्राप्त हुआ था।

S.O. 3163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby published the following award of the Central Government Industrial Tribunal-Cum-Labour Court Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Mysore and their workmen, which was received by the Central Government on 23-11-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated : 15th Day of November, 1989.

PRESENT :

Shri B. N. Lalge, B.A. (Hons) LL.B.—Presiding Officer,
Central Reference No. 60/87

Old Central Reference No. 25/86

I PARTY

Shri C. A. Kumar, Room No. 54, Race Course Road,
Madhavanagar, Bangalore-560001.

Vs.

II PARTY

The Chairman & Managing Director, State Bank of
Mysore, Head Office, K.G. Road, Bangalore-560009.

APPEARANCES :

For the I party Shri V. Gopala Gowda, Advocate.
For the II party Shri C. M. Nagabhushana, Advocate.

AWARD

By exercising its powers under section 10 (1)(d) of the Industrial Disputes Act, the Government of India, Ministry of Labour had made the present reference on the following point of dispute by its order No. L-12012/64/86-D.II(A) dated 21-10-1986.

2. By a General Order No. L-11025/A/87-D IV(B) dated 13-2-1987. It has been transferred to this Tribunal and it is at Sl. No. 62.

POINT OF REFERENCE

"Whether the action of the management of State Bank of Mysore in dismissing from service Shri C.A. Kumar, Agriculture Clerk, Malavalli Branch, w.e.f. 9-2-1985 is justified? If not, to what relief is the concerned workman entitled?"

3. The first party workman has then filed its claim statement and inter alia he has stated as follows :

He was employed as an Agricultural Clerk on 27-10-1975 at Kalimuddanadoddi Branch. After six months of service he was confirmed. He was discharging his duties honestly and diligently. His service has been illegally terminated on 9-2-1985. Then he was drawing a salary of Rs. 2,200 per month of Malavali branch of Mandya District. He was kept under suspension by a letter dated 5-4-1979. On 6-5-1980 he was served with a show cause notice. He then submitted his explanation dated 30-6-1980. They did not accept his explanation. A charge sheet dated 27-9-1980 was served on him, alleging certain acts of misconduct falling under clause 19.5(j) of the bipartite settlement. He gave his explanation on 20-11-1980. The second party decided to conduct an enquiry against him and appointed one Sri. K. Sriramchandra Murthy as the enquiry officer. He was a senior management officer and was very much biased and prejudiced against him. He conducted a false of an enquired. He was not furnished with the documents on the basis of which the charges were based. No order had been passed by the enquiry officer on the letter of the first party dated 2-3-1984. The enquiry officer has relied upon the preliminary investigation report, the CBI report and handwriting expert's report, the copies of which were not furnished to him. The CBI Inspector has been examined as a witness. The preliminary investigation report has been taken into account for recording the findings, the enquiry held by the enquiry officer is in violation of the principles of natural justice. The handwriting expert was not tendered for cross-examination, inspite of request made by the employee. The enquiry officer did not give him proper opportunity to produce his witnesses and documents. All the employees who were requested to depose in favour of the first party employee apprehended punishment at the hands of the management. The case of the first party employee was therefore prejudiced. The enquiry officer conducted the enquiry at different places, to suit the convenience of the management and it has caused great hardship to the employee. The findings of the enquiry officer are perverse. The Enquiry Officer has taken special interest in disallowing many of his questions. The Enquiry Officer has taken into account extraneous matters. He has exceeded his authority. The Enquiry held by him is opposed to the principle of natural justice and the provisions of the bipartite settlement. The disciplinary authority did not apply its mind and issued a second show cause notice dated 20-12-1984, calling upon him to show cause as to why he should not be dismissed. The disciplinary authority did not consider his reply dated 2-1-1985 and confirmed the punishment. The extenuating and mitigating circumstances and the past record were not taken into consideration. He preferred an appeal on 20-3-1985. Without considering his contentions his appeal has been dismissed, as per the letter dated 13-6-1985. The appellate authority has not

applied its mind. Then he raised the present dispute. The conciliation failed since the management took an unreasonable stand. The action of the management in dismissing him, even after filing of a suit for recovery of money is harsh and shockingly disproportionate. This Tribunal may set aside the order of dismissal under section 11 A of the I.D. Act. It is prayed that the order of dismissal may be set aside and he may be ordered to be reinstated with all the consequential benefits.

4. The second party has filed its counter statement and inter-alia it has been contended as follows :

It is not correct that he was discharging his duties honestly and diligently, it is not correct that sufficient particulars were not given in the charge sheet issued to him. He had understood the charges very well. On considering his explanations the second party decided to hold a domestic enquiry against him. The allegation that the Enquiry Officer was biased and prejudiced is false. The allegation that all the documents required to be given to him were not furnished is not correct. His letter dated 2-3-1984 has been dealt with by the Enquiry Officer in accordance with law. He had all the opportunity to adduce evidence in his defence. It is not correct that the Enquiry Officer has violated the principles of natural justice or the terms of the bipartite settlements. It is not correct that the copies of the reports on which the Enquiry Officer has relied upon were not furnished to him. He was not entitled by any law to participate in the preliminary investigation. He had all the opportunity to summon the handwriting expert. It is denied that he was denied of an opportunity or that his defence was prejudiced. He was given opportunity to produce his witnesses and documents. It is not correct that the Enquiry Officer conducted the Enquiry at different places to put him to inconvenience. The findings of the Enquiry Officer are based on evidence placed on record. It is not correct that the findings are perverse, or that they are based on no legal evidence. The I party employee and his representative have participated in the Enquiry. The Enquiry Officer has considered all the objections raised by him. It is false to say that the Enquiry Officer had taken special interest to disallow his questions. It is false that the Enquiry Officer has taken into account any extraneous matter. It is not true that the Enquiry Officer has exceeded his authority, to protect any interest of the management. The first party employee adopted various tactics to protract the proceedings. But, even then he was given fair and proper opportunity. The disciplinary authority applied its mind independently and it is not true that the disciplinary authority has not considered his objections. On considering the gravity of the misconduct committed by him, the second party found it necessary to dismiss him. His allegation that the appellate authority did not consider his appeal on merits is not correct. There was no merit in his appeal. It is not correct that the conciliation failed because of any unreasonable attitude of the management. The second party is a public sector financial institution. It is in the position of a trustee of the properties of the public. The institution is required to maintain highest degree of moral and ethical standards. The act of the I party employee is not only criminal, but it is an act of stabbing at the back of the master. He has betrayed the confidence reposed in him. The act of misconduct committed by him deserves no sympathy. The reference may be rejected.

5. In view of the said pleadings, one preliminary issue had been raised as shown below :

"Whether the domestic enquiry held against the I party is in accordance with the law?"

6. Parties were called upon to adduce evidence on the same.

7. The Second Party management examined the Enquiry Officer and got marked Exs. M-1 to M-10. Thereafter, the first party employee has examined himself. The parties were heard on the said issue.

8. By a considered order dated 13-7-1988, it has been held on the said issue that the second party has conducted the domestic enquiry in accordance with law.

9. The parties were then called upon to adduce further evidence if any on the rest of the points and argue.

10. No more evidence has been adduced by either party.

11. The parties have been heard on the merits of the case.

12. My finding on the point of reference is as follows:

The action of the management of the State Bank of Mysore in dismissing Shri C.A. Kumar, Agriculture Clerk, Malavalli Branch with effect from 9-2-1985 is justified and he is not entitled to any relief.

REASONS

In Para 3 of the claim statement, the domestic enquiry held against the I party employee has been attacked on several grounds. Now, that the domestic enquiry has been held to be valid, the contentions raised in para 3 do not survive.

13. In para 2 of the claim statement, the employee has stated that the chargesheet dated 27-9-1980 issued to him is vague and lacks material particulars and he was not able to understand the allegations made by the management. However, he admits that he had sent his explanation, but the management did not accept the same and proceeded to hold an enquiry. The document under which the enquiry was ordered is at Ex. M-1 dated 25-11-1980. It shows that MW-1 Shri K. Sreeramachandra Murthy was appointed as the Enquiry Officer and he was given certain instructions. The order is enclosed with the chargesheet issued to the employee. The chargesheet is dated 27-9-1980. It reads that the explanation given by the employee dated 30th June 1980 to their show-cause notice dated 6-5-1980 was not satisfactory and therefore a regular chargesheet had been issued to him. It describes that from 12-11-1976 to 8-4-1979, he was working as an Agricultural Clerk at their Malavalli Branch and during that period he had committed the following acts of misconduct :

1. He had withdrawn or had arranged to withdraw indirectly amounts aggregating to Rs. 1,89,422.33 P. from 40 agricultural cash credit accounts in the manner shown below :

(a) He had posted 27 Agricultural Cash Credit (henceforth called as A.C.C.) withdrawal slips containing the forged signatures with the respective ledger accounts as shown in Annexure 'A' and had withdrawn or had managed to withdraw the amounts shown in Column 5 of Annexure 'A' and had misappropriated the same.

(b) He had managed to obtain the signatures or thumb impressions of the borrowers on surplus Agricultural Cash Credit withdrawal forms from 13 farmer-borrowers in respect of A.C.C. accounts shown in Annexure 'B' and by making fraudulent use of the said surplus withdrawal forms, he had withdrawn or had managed to withdraw the amounts shown in Column 5 of Annexure 'B' and had misappropriated the same.

2. That he had posted fictitious credits in several A.C.C. accounts as shown below :

(a) In respect of 26 accounts shown in Annexure 'C' amounts as shown in Col. 6 had been credited without supporting vouchers.

(b) In respect of 14 accounts shown in Annexure 'D', he had shown credits of amounts as shown in Column No. 6 of Annexure 'D' on the basis of fabricated vouchers, prepared by himself.

3. He had prepared 14 A.C.C. withdrawal forms for amounts aggregating to Rs. 57,376.08 P. as shown in Annexure 'E' without posting them in the ledgers. He further got them passed by the Manager and fraudulently misappropriated the same, by obtaining payments from the bank.

4. With an ulterior motive of concealing his fraudulent acts, he had manipulated the entries in the A.C.C. progressive

balance book and further manipulated the entries in their day book pertaining to interest, commission and exchange accounts and also made such entries in the register of interest, commission and exchange analysis.

5. With dishonest intention of concealing his fraud he has unauthorisedly embossed the audit seal in the A.C.C. ledgers.
6. He has prepared false cash credit ledger sheets and substituted them in the place of the original sheets, with a dishonest intention of concealing his fraudulent acts.
7. He has dishonestly and deliberately credited the amounts shown in col. No. 4 of Annexure 'F' of interest charged on several A.C.C. and Agricultural Term Loan Accounts to other accounts, shown in Column No. 5 of Annexures C and D, instead of properly crediting the same to the branch interest accounts.
8. The management thus charged him of having committed acts of misconduct, prejudicial to the interests of the bank and made punishable under clause 19.5(j) of the Bipartite Settlement of 1966. The explanation of the employee is at page 14 in the file of Ex. M-1. In his detailed reply, the employee has denied each and every sentence of the chargesheet shown above. There is no contention therein that he did not understand any part of the chargesheet or that it was vague or that material particulars have not been disclosed therein. In his evidence, the I party employee has stated that the Enquiry Officer did not read out and explain the chargesheet to him and he did not understand the same. On that point, there is already a finding in the Order dated 13-7-88. Nowhere in his evidence he has contended that the charges were vague that the charge lacks-material particulars or that he found it difficult to understand the same. Each item of the allegation has been described in the chargesheet with specific particulars, giving the date of withdrawal, account number, name of the account holder, withdrawal form number, amounts withdrawn etc. The annexures make it abundantly clear as to what were the allegations against him and as to what were the acts of misconduct which he was called upon to meet. The contentions raised in para 2 of the claim statement are therefore not available.
14. In para 3(g) of the claim statement, it has been contended that the findings of the Enquiry Officer are perverse. It is also contended that they are not based on legal evidence and that they are opposed to the evidence as a whole. The chief bone of contention of the I party is that the handwriting expert has not been examined and in the absence of his evidence, the report given by him has been taken on record and acted upon by the Enquiry Officer. It has been further contended that the statements of persons said to have been examined during the course of the investigation, but who have not been examined before the Enquiry Officer have been admitted and thus there was no legal evidence and thus the findings of the Enquiry Officer are based on no legal evidence. The evidence has been analysed, keeping in view the aforesaid submissions and in the first instance only that much part of the chargesheet has been taken up for discussion which is asserted by the II party to have been substantiated by concrete evidence on record.

15. The first item of the charge is that he had posted 27 A.C.C. withdrawal slips containing forged signatures in the respective ledgers of the account holders shown in Annexure 'A', as many as 13 A.C.C. account holders have amounts shown in Column No. 5 and had misappropriated the same. Out of the 27 A.C.C. account holders shown in Annexure 'A', as many as 13 A.C.C. account holders have been examined before the Enquiry Officer. Their evidence has been further substantiated by the auditor BW-3 D'Souza his assistant BW-2 Srivastava and the then manager of the bank BW-1 A. V. Satyanarayana Rao. Though there is no direct evidence of the handwriting expert, the report of the expert

has been endeavoured to be proved through the evidence of BW-22 Rama Krishnan, C.B.I. Inspector.

16. The following discussion proceeds on the footing that the contention of the I party is acceptable to the extent that the Enquiry Officer should not have acted upon the report or the handwriting expert and the statements of those A.C. borrowers, who have not been actually examined before the Enquiry Officer.

17. The evidence of BW-2 Srivastava the Assistant to the Auditor, BW-3 H. D'Souza, K. V. Satyanarayana Rao, the then Manager of the Malavalli branch, BW-4 H.N. Nagaraj, BW-5 M. L. Siddappa and BW-6 M. A. Khan indicates that the I party employee was then working as the Agricultural Clerk and he was dealing with the cases of A.C.C. borrowers, who had contracted with M/s. Sri Chamundeswari Sugar's Ltd. to supply sugar cane and had agreed and directed the said sugar company to send their amounts to the II party bank. The evidence of BW-1 on page 49 (pages herein referred to those shown in red-ink of the File Ex. M-2) shows that the Company had entered into agreement with the bank and had guarantee crop loan advances sanctioned to them to the extent of Rs. 3 crores and that the officers of the company used to bring farmers to the branch for sanction of crop loan advances and then the latter used to supply the sugarcane to the company and in turn the company used to make payments to the branch to be credited to individual account holders with a detailed list BW-1 Satyanarayana Rao further explains that the draft sent by the company used to be accompanied by a list and they used to credit the individual accounts of the branch with the transfer vouchers so as to enable the parties to draw the amounts, if there was any surplus. In regard to the nature of duties of the I party employee, BW-1 has described in page 49 that he was assisting the farmers with the preparation of withdrawal vouchers, when they visit the bank for payment, used to prepare transfer vouchers for making credits in the ledger, used to maintain all A.F. ledgers with postings, used to write A.F. day books and was also directed to attend such other works as entrusted to him. On page 50, BW-1 further states that it was the I party employee who used to calculate periodical interests applicable to each account in A.F. Section and used to post them in the ledgers. He has stated that it was the duty of the I party employee to extract A.F. ledger balances from time to time and it was part of his duty to write the clean cash books. The cross-examination of BW-1 has commenced on page 178. The D. R. has questioned him again regarding the duties performed by the Agricultural Clerk. He has reiterated his statement and has further stated that an office order has been issued to him in that connection. In the cross-examination, BW-1 has been questioned as regards the responsibilities of the superior and higher officers of the I party employee. It was not pointed out to me from the cross-examination of BW-1 that the I party employee has ever denied that he was an Agricultural Clerk or that the aforesaid duties, as narrated by BW-1 did not form part of his job.

18. Annexure 'A' to the chargesheet described the duties of withdrawal, account numbers, names of account holders, number of the withdrawal forms and the amounts withdrawn and the chargesheet alleges that the withdrawal forms in relation to these withdrawals of 27 borrowers bear forged signature or thumb impressions. Out of the said 27 borrowers, the Presiding Officer examined before the Enquiry Officer only the following witnesses.

19. BW-8 Mante Lingaiah, BW-9 Gooli Gowda BW-10 Chikka Ninga Gowda, BW-11 Mante Gowda, BW-12 Manche Gowda BW-13 Bette Gowda, BW-14 Sidde Gowda S/o Karisidde Gowda, BW-21 Sidde Gowda S/o Ninga Gowda, BW-17 Siddaiah BW-18 Chance Gowda BW-20 Sigaiah S/o Sidda Gowda and BW-15 Sidde Gowda A/c. No. 1060.

20. Charge No. 1(ii) states that the I party employee posted fictitious credits to the accounts of several A.C.C. account holders and in respect of 26 account holders shown in Annexure 'C' and that amounts shown in column No. 6 have been credited without supporting vouchers. It is then alleged that in respect of 14 accounts shown in Annexure 'D' amounts shown in column No. 6 have been credited on the basis of spurious vouchers, prepared by himself.

21. The charge at item No. 1 (ii) has to be given precedence, in order to examine whether the respective A.C.C. account holders had in the credit of their accounts sufficient amounts, so that there was any possibility of any bank employee committing an act of misappropriation in regard to such amounts.

22. As has been observed earlier, the evidence of BW-1 indicates that M/s. Sri Chamundeswari Sugar Ltd. used to send demand drafts with credit lists. The period of alleged misappropriation is shown in the chargesheet to be between 12th November, 1976 and 8th April, 1979. The II party got marked before the Enquiry Officer all the relevant lists between 6-9-1977 and about the end of January, 1979. These documents are marked as BEX 6(1) to 6(73). They are at pages 1 to 94 in file of exhibits marked as 'A'. On close examination of these lists with reference to Annexure 'C' of the chargesheet, it would be obvious that none of these lists shows that any amount shown in Column No. 7 of Annexure 'C' had ever been sent to the II party bank by the Sugar Company. Nowhere, it has been contended by the first party and there is not even a single suggestion to any witness that any farmer shown in Annexure 'C' had ever received or claimed any such amount shown in column No. 7 from the Sugar Company or from the Bank. Similar is the case with credits of various amounts shown in Column No. 6 of Annexure 'D' to the accounts of A.C.C. account holders shown in column 3 of Annexure 'D'. A statement made by a person against his own pecuniary interest, operates, under certain circumstances as an admission. BW-10 Chikka Ning Gowda had given his statement before the Enquiry Officer and it has been marked as BEX 252 at page No. 383 of File 'B'. He had been tendered for cross-examination. No suggestion has been made to him that the statements made by him at BEX 252 are incorrect. For the question whether he remembers the contents, the witness has stated that they examined the record and took down his statement. Since there is no suggestion made to BW-10 Chikka Ning Gowda that he had credited any amount of Rs. 5,080 40 P. on 7-2-1979, it follows that the said credit entry on 7-2-1979, for which there is no supporting voucher is a fictitious credit. The statement recorded by the Investigating Officer of BW-12 Manche Gowda has been marked as BEX 253 on page 384 of File 'B'. Similarly, there is no suggestion that on any date he was entitled to receive a sum of Rs. 4,528.40 P. for his account No. 510. On these points, there are no question put to the witness in his cross-examination.

23. To sum up, the evidence of BW-1 Satyanarayana Rao, BW-3 D. Souza coupled with the lists of Ex. M-3 series and when looked in the context of the evidence of BW-10 Chikka Ning Gowda, BW-12 Mante Gowda and BW-19 Thimme Gowda, it would be obvious that the credit entries at Annexure 'C' are not supported by any vouchers and those at Annexure 'D' have not been supported by genuine vouchers.

24. The evidence of BW-1 Satyanarayana Rao, BW-4 Nagaraj, BW-5 Siddappa and BW-6 Khan who were working in the same branch cannot be assailed in as much as they have testified to the handwriting and initials and signatures of the I party employee. It is not the case of the I party employee that the entries in the relevant bank books in relation to Annexure 'C' and 'D' are not in his handwriting. Not a single voucher which has been described as a spurious voucher, as referred in Annexure 'D', has been picked up and pointed out to me, saying that it is a genuine voucher made for the legitimate credit of the amounts shown in column No. 5 of Annexure 'D'. It would be ridiculous to hold that any sane person would credit amounts such as Rs. 4,000/- or Rs. 5,000/- and odd to his own account or that he would receive to his own account such huge amounts from the sugar Company and disown his own amounts. Secondly, what is more conspicuous is that there is not even a suggestion to any of the concerned witness that the entry made to his account, as shown in Annexure 'C' or 'D' was a genuine entry and so much amount had been, in fact, received to his credit from M/s. Sri Chamundeswari Sugars Ltd. It cannot be forgotten that the said sugar company also has no say in the matter that it had ever sent the amounts to the II party bank for being credited to the various A.C.C. account holders, as described in Annexures 'C' and 'D' of the chargesheet. The evidence placed before the Enquiry Officer by the management is indeed formidable and it

establishes that it was the I party employee who had made false credit entries in the accounts of various A.C.C. account of various A.C.C. account holders without any supporting voucher or with forged vouchers, as described in Annexures 'C' and 'D'. The imputations made in para 1 (ii) (a) (b) have been established. I do not find any unreasonable assessment of evidence by the E.O.

25. During the course of the oral arguments and also in the written arguments filed by the I party in connection with Charge No. (ii), it has been contended that if any credits have been made to the A.C.C. accounts, the same has been done only under the instructions of the then Manager and that the then Manager had scrutinised the relevant vouchers in the regular course of business. As has been observed earlier, it cannot be accepted that any officer of a rank of Branch Manager would be as imprudent as an insane person to credit amounts of Rs. 4,000/-, Rs. 5,000/- etc., to the accounts of the farmers, without receiving the same from M/s. Sri Chamundeswari Sugars Ltd. Merely, because a person holds a lower rank as an agricultural clerk, he is not absolved of any responsibility and he cannot be permitted to plead that he has blindly posted the entries. Even if such a contention is to be accepted, there will be no explanation as to how and why for the vouchers and slips of Annexure 'C' and 'D' are in the handwriting of the I party employee.

26. The first head of charge is that he had fraudulently withdrawn and had arranged to withdraw the amounts aggregating to Rs. 1,89,422 33 P. from 40 Agricultural Cash Credit Accounts in the following manner and had misappropriated the same. In regard to the 27 Agricultural Cash Credit (ACC) accounts shown in Annexure 'A', it was alleged that he had forged the signatures of the account holders in the withdrawal slips and had withdrawn or has got the amounts withdrawn shown in Column No 5 of Annexure 'A'. As regards 13 ACC amounts, it is alleged that he had obtained or managed to obtain their signatures or thumb impressions of surplus ACC withdrawal forms, as shown in Annexure 'B' and has misappropriated the amounts shown in Column No. 5.

27. Out of 27 ACC account holders shown in Annexure 'A' the management examined the following ACC account holders before the Enquiry Officer. They are as follows :

Sl. No.	Serial No. of Annexure	Name of ACC Account Holder	ACC Account Number
1.	3	BW-21 Sidde Gowda	1237
2.	4	BW-17 Siddaiah	1286
3.	6	BW-20 Siddajah	1139
4.	9	BW-18 Channe Gowda	1135
5.	11	BW-8 Mante Lingiah	1326
6.	12	BW-11 Manche Gowda	510
7.	13	BW-10 Chikkaninge Gowda	1225
8.	14	BW-19 Thimme Gowda	623
9.	19	BW-14 Sidde Gowda	1303
10.	20	BW-12 Manche Gowda	1227
11.	21	BW-13 Bette Gowda	1364
12.	25	BW-9 Gooli Gowda	1120
13.	26	BW-15 Sidde Gowda	1060

28. Since the modus-operandi adopted by the I party workman, as alleged by the II party is the same in the case of all these persons, it would be sufficient, if the accounts of some of these thirteen account holders are examined in detail.

29. The original statement given by BW-21 Sidde Gowda is at page 375, and marked by the Enquiry Officer as Ex. P. 129 (BEX 244). His ACC account sheet is at page 152 and marked by the Enquiry Officer as Ex. 18-B. In regard to the account of BW-21 Sidde Gowda, it is alleged that the I party employee had forged the withdrawal slip on page 151, marked as Ex. BEX 18-A and had withdrawn a

sum of Rs. 4,780.40 P. on 12-12-78. The control card of ACC Account No. 1237 of Sidde Gowda is on page 153 and marked as BEX 18 C. The control card contains the photograph of Sidde Gowda and has specimen left thumb marks. When the document at BEX 18-A is examined in juxtaposition with the ACC account sheet at BEX 18-B and the control card BEX 18-C, it would be evident that the thumb marks on the frontal side of the withdrawal slip BEX 18-A, on the one hand and the LTM's of Sidde Gowda on BEX 18-C on the other hand are entirely different. Similarly, the thumb mark on the back side of the withdrawal slip BEX 18-A is entirely different from the admitted thumb marks of Sidde Gowda on BEX 18-C. When the Enquiry Officer recorded the statement of BW-21 Sidde Gowda on pages 169 and 170 of enquiry file, Ex. M-2, the I party workman was present and in his presence the LTM's of BW-21 Sidde Gowda has been taken on pages 169 and 170. The LTM's contained on the slip, Ex. BEX 18-A on the front side and the back side, when compared with the LTM's of Sidde Gowda taken in the presence of the I party employee on pages 169 and 170, it would be as clear as day light that the LTM's on the withdrawal slip BEX 18-A (page 151) are not the LTM's of the ACC account holder BW-21 Sidde Gowda. By virtue of the provisions of Section 73 of the Indian Evidence Act, when the two thumb marks appearing on the front and back side of BEX 18-A of BW-21 Sidde Gowda are thus compared with the admitted thumb marks of Sidde Gowda on BEX 18-C and those on pages 169 and 170, it would be obvious that the thumb marks on BEX 18-A, the withdrawal slip are forged LTM's. There is voluminous record to show that the withdrawal slip and the endorsement to the thumb marks in BEX 18-A are in the handwriting of the I party employee Kumar. There is thus intrinsic evidence that the withdrawal slip BEX 18-A does not bear the thumb marks of BW-21 Sidde Gowda. The written statement of Sidde Gowda is at BEX 244 (page 375 of Ex. M-4) (Ex. P. 127). He has categorically stated that after 3-11-1978 he never appeared at the bank, never put his LTM on any document and never drawn any amount. His evidence recorded before the Enquiry Officer is on page 169 (written in red ink) of the enquiry file, Ex. M-2. Before the Enquiry Officer also, on pages 169 and 170 of Ex. M-2 (in red ink), he has reiterated that after the transaction of Rs. 2,166/- dated 3-11-1978, he never approached the bank and that on 12-12-78, he never came to the bank and did not draw any amount such as Rs. 4,780.40 P. His cross-examination is to be found on page 265. He has not been cross-examined on the point whether he had approached the bank on 12-12-78 and whether he had drawn the sum of Rs. 4,780.40 P. by putting his LTM's on the withdrawal slip BEX 18-A page 151. There is not even a suggestion to him that the withdrawal slip BEX 18-A bears his LTM's on the front side and the back side. His examination is directed on the point whether he had given the written statement BEX 244 (page 375 of Ex. P. 129). The evidence of BW-21 Sidde Gowda, his evidence before the Enquiry Officer and the documents at BEX 18-A, 18-B and 18-C (pages 151, 152 and 153) thus conclusively prove that on 12-12-78, the I party employee forged the slip Ex. BEX-18 A, made the entry in his own handwriting in ACC account sheet BEX 18-B and withdraw the said amount.

30. The evidence of BW-17 Siddaiah is to be found on pages 161 and 162 of Ex. M-2. The management alleged that on 27-12-78, the I party employee forged the withdrawal slip BEX 24-A, as though it has been executed by BW-17 Siddaiah by putting his LTM's on the front side and backside of BEX 24-A and withdrew the said amount and misappropriated the same. The management has proved, by the evidence of the manager and such other witnesses of the bank, as has been analysed above that the handwriting in the withdrawal slip BEX 24-A including the endorsements of the LTM's and the handwriting of the bottom portion of the ACC account sheet, BEX 24-B (pages 163 and 164) are the same and that they are all written by the I party employee. The written statement of BW-17 Siddaiah is at Ex. P. 146 (red ink) page 377. It bears his LTM. The cross-examination of BW-17 Siddaiah is to be found on pages 256 and 257 (in red ink) of Ex. M-2. There cannot be any dispute on the point that the LTM's on pages 161, 162 and 256 and 257 of Ex. M-2 are those of BW-17 Siddaiah, since they have been taken in the presence of the I party employee when the witness was examined before him. The LTM's on BEX 24-A, the withdrawal slip on the front side

and back side on the one hand when compared with all these LTM's of Siddaiah on pages 161, 162 and 256 and 257 of Ex. M-2 and the one on his written statement at page 377 (Ex. P. 146) of Ex. M-4 and the two LTM's appearing in BEX 24-C (page 165 in red ink), the control card Ex. M-4 on the other hand, it is as clear as day light that the LTM on the front side and the LTM on the back side of the withdrawal slip BEX 24-A are not at all the LTM's of BW-17 Siddaiah. When we take into account the fact that the handwriting and the endorsement of the two LTM's on BEX 24-A, the withdrawal slip and the handwriting are in the handwriting of the I party employee and so also when we take into account the fact that the debit entry of Rs. 4,910.25 P. dated 27-12-78 in BEX 24-B (page 164 in red ink) is also in the handwriting of the I party employee. An irresistible inference arises that he has forged the withdrawal slip BEX 24-A, consequently he has made the entry in the ACC account sheet in BEX 24-B and he has misappropriated the said amount. In the cross-examination of BW-17, there is not even a suggestion that BW-17 Siddaiah had ever approached the bank on 27-12-1978 or that he had put his LTM's on the front side and back side of the withdrawal slip BEX 24-A or that he has ever drawn the cash of Rs. 4,910.25 P. on that day. The cross-examination is directed only on the point whether he has ever given his written statement Ex. P. 146 (P. 377 in red ink of Ex. M-4). Even if the written statement, Ex. P. 146, page 377 is eschewed from evidence placed before the Enquiry Officer, the rest of the evidence, as discussed above proves that it was only the I party employee who had forged the slip BEX 24-A and had misappropriated that amount, by making a false debit of the said account in the account of Siddaiah BEX 24-B on 27-12-78.

31. In regard to the case of BW-13 Bette Gowda, Account No. SC 1364, the management has alleged that on 7-12-1978 the I party employee has prepared a forged withdrawal form and has withdrawn a sum of Rs. 4,680.40 P. and has misappropriated the same. The examination-in-chief of Bette Gowda is to be found on pages 153 and 154 and the cross-examination is to be found on pages 226 to 231 (in red ink) of Ex. M-2. His written statement given before the Investigating Officer is at Ex. P. 125 (in red ink) page 374. It is alleged by the management that in December 1978, there was no amount to his credit, but that a bogus credit of Rs. 4,680.40 P. dated 4-12-78 has been shown and the very same amount has been withdrawn on 7-12-78 by a forged withdrawal slip. The withdrawal form is at BEX 99-A. The ACC account sheet of BW-13 Bette Gowda is at BEX 99-B and his control card is at BEX 99-C (pages 220, 221 and 222). As observed earlier the LTM's of Bette Gowda appearing on pages 153 and 154 from pages 276 to 231 of Ex. M-2 have been taken in the presence of the I party employee and his representative. They are beyond dispute. The LTM's of Bette Gowda in control card BEX 99-C have come into existence at an undisputed point of time. The evidence of MW-1 the then Manager, that of MW-5 M. L. Siddappa, that of MW-6 U.M.A. Khan and BW-7 H. Varadarajan, the Technical Officer has established about the handwriting of the I party workman in the various ledger account books, withdrawal slips control card, ACC account sheets of the bank. It is manifest from the withdrawal slip BEX 99-A that it is in the handwriting of the I party, including the endorsements of the LTM, both on the front side and on the back side. If we compare the LTM's of the withdrawal slips of BEX 99-A on the front side and on the back side on the one hand with the proved LTM's of Bette Gowda on pages 153, 156, 226 to 231 of Ex. M-2 and his LTM on the written statement BEX P. 125 (page 374 in red ink) and the LTM's on the control card BEX 99-C page 222 on the other hand, it is very apparent that the two LTM's on BEX 99 are forged LTM's. Since the credit and debit entry in the ACC sheet BEX 99-B of Rs. 4,680.40 P. has been established to be in the handwriting of the I party employee, there can be no doubt that it is the I party employee who had forged the withdrawal slip and had taken that amount. The entire cross-examination of BW-13 Bette Gowda is concentrated on the point as to how his written statement Ex. P. 125 (page 374 of Ex. M-4) had come into existence. I cannot but reiterate that even if the written statement, Ex. P. 125 is excluded from the record, there is absolutely no reply from the I party employee for the oral evidence of

MW-13 Bette Gowda given before the Enquiry Officer and the documents at BEX 99-A, 99-B and 99-C. The evidence of BW-13 Bette Gowda discloses that no amount of Rs. 4,680.40 P. was ever credited to his account by any D.D. No attempt has been made for the I party to disclose that even otherwise, M/s. Sri Chamundeswari Sugars Ltd. had ever sent any amount by DD to be credited to the account No. 1364 of BW-13 Bette Gowda on 4-12-1978. It is too obvious to deny that the credit entry dated 4-12-78 with the debit entry dated 7-12-78 have been manipulated and that the amount has been withdrawn and misappropriated. There is insurmountable evidence that no other employee had any scope, chance or motive to manipulate these documents and since the I party employee was the sole person dealing with these documents, it has been established that he is responsible for forging the withdrawal slip BEX 99-A and since no other person can be benefited by forging the withdrawal slip and by making bogus entries in the ACC account sheet BEX 99-B, it follows that the I party employee was the whole and sole person who has been benefited by such withdrawal.

32. The examination-in-chief of BW-19 Thimme Gowda before the Enquiry Officer is to be found on page 165 in red ink of the enquiry file, Ex. M-2. His cross-examination is to be found on pages 258 and 259 in red ink of Ex. M-2, and the documents relating to the account of Thimme Gowda are BEX 69-A, 69-B, 69-C and 69-D. The case of management in relation to the account of Thimme Gowda is that on 1-4-1978 the withdrawal slip BEX 69-A was passed for payment, it was entered in the Manager's scroll, further recorded in the shroff's payment day book and also in the ACC day book, and that the said withdrawal is not at all to be found in the ACC account sheet BEX 69-C, because BEX 69-C is not the original one but a forged substituted one. The evidence of BW-1 on pages 70 and 71 in red ink makes out the said case. BW-1 has stated that at Sl. No. 2 of the bank, Manager's scroll at Sl. No. 16 of the Shroff's payment scroll, these entries are to be found and that token No. 73 had been given for the encashment of the said amount. It has been further made out that the ACC day book shows the said entry. The bank manager's scroll is marked as BEX 71 and the shroff scroll BEX 72. BW-1 has further stated that the withdrawal slip BEX 69-A and the transfer voucher BEX 69-B have been passed with reference to the ledger. One cannot even imagine as to how a withdrawal slip or transfer voucher can be passed without making concerned entries in the ledger. Since the bank manager's scroll, shroff scroll and ACC day book point out the said debit entry, as a corollary, it follows that the ACC ledger sheet BEX 69-C is not the original one. In order to substantiate the said evidence, the management has relied upon the evidence of BW-19 Thimme Gowda; A.C.C. ledger account sheet No. Ex. 16-C. Ledger sheet No. 197, and withdrawal form Ex. 69-A substantiate the evidence of BW-19 Thimme Gowda. The misappropriation in relation to the amount of Rs. 4,872.58 p. is established by the aforesaid evidence.

33. Irrespective of the fact whether there was expert evidence of the handwriting and thumb mark expert, the evidence of the witnesses examined before the Enquiry Officer and the documentary evidence, as discussed above, establish the manipulation of accounts, forgery and the misappropriation of the various amounts of the A.C.C. holders of Annexure 'A' as shown in charge No. I(a).

34. The Enquiry Officer has discussed the aforesaid evidence from pages 23 to 29 of his report Ex. M-7.

35. Annexure 'B' describes the names, account numbers and the amounts misappropriated in the case of 13 A.C.C. account holders. As stated earlier, in charge I B, it is alleged that the I party employee had obtained signatures or thumb impressions of the borrowers on surplus A.C.C. withdrawal forms and had made fraudulent use of those forms and had withdrawn the amount shown in column No. 5. BW-16 Kenche Gowda is one of the borrowers of

Annexure 'B' examined before the Enquiry Officer. The evidence of BW-16 Kenche Gowda is substantiated by the ledger sheet, BEX 159 B at page 268, withdrawal form BEX 159 A (pages 266 and 267) Branch Manager's scroll book BEX 160 Shroff's scroll BEX 161. Thus, there is concrete proof that BW-16 Kenche Gowda did not tender withdrawal slip and did not draw for himself a sum of Rs. 5,485.60 p. The cross-examination of BW-15 Kenche Gowda is only on the point whether any Bank Officer had gone in search of him. There is no suggestion that BW-16 Kenche Gowda had ever himself tendered the withdrawal slip and had ever drawn a sum of Rs. 5,485.60 p. on 25-3-78. By a random examination of one of the witnesses of Annexure 'B' it has been established that the allegations made by the management are well founded. The Enquiry Officer had discussed about Charge I (b) from pages 379 to 381 (in red ink). There is nothing illogical or incongruous in the discussion made by him.

36. Annexure 'C' and 'D' relate to Charge No. II. It is alleged that in respect of 26 accounts shown in Annexure 'C', amounts shown in column No. 6 had been credited without any supporting vouchers. The following A.C.C. account holders have been examined before the Enquiry Officer out of the 26 persons shown in Annexure 'C'.

Sl. No.	Bank Witness	Name of the A.C.C. Account Holder
1.	BW 8	K. Matelingaih
2.	BW 9	Gooli Gowda
3.	BW 10	Chikkalingegowda
4.	BW 12	Manchegowda
5.	BW 13	Bette Gowda
6.	BW 14	Siddé Gowada
7.	BW 15	Sidde Gowda
8.	BW 17	Siddaiah
9.	BW 18	Channe Gcwda
10.	BW 20	Siddaiah
11.	BW 21	Sidde Gowda

It is not the case of the I party employee that any one of these A.C.C. account holders ever credited the accounts shown against them in column No. 6 of Annexure 'C'. There is not even a suggestion made to any of these witnesses in the cross-examination before the Enquiry Officer that they had credited these amounts and had presented supporting vouchers. It is also not the case of the I party employee that M/s. Sri Chamundeswari Sugars Ltd. had ever sent any such amounts to any of the A.C.C. account holders for being credited to their accounts. The evidence of these witnesses have been supported by the ledger sheets, withdrawal forms and scrolls, whereas there are no credit vouchers.

37. In regard to Annexure 'D', the management had alleged that on the basis of the spurious vouchers, amounts shown in Column No. 6 has been credited to the accounts. Out of 14 persons shown in Annexure 'D', the management examined BW 12 Manchegowda before the Enquiry Officer. The evidence of BW 12 Manchegowda had been substantiated by the ledger sheet BEX 61 A at page 189. Branch Manager Scroll BEX 62, Shroff scroll BEX 63, A.C.C. day book BEX 64. There is no case put forth by the I party employee that any of these 14 A.C.C. account holders of Annexure 'D' ever prepared credit vouchers or ever credited the amounts shown in Column No. 5 of Annexure 'D'. It is of crucial significance to note that none of these account holders has come forth claiming credit to any amounts shown in Column No. 6 of Annexure 'D'. The Enquiry Officer has taken into account the evidence of BW-1 Satyanarayana Rao and has discussed the evidence of the A.C.C. account holders along with the relevant documents at pages 381 to 385 in red ink of Ex. M-7. The discussion is beyond reproach. He has given cogent and consistent reasons for arriving at his findings.

38. In regard to Charge No III, it is alleged by the management that the I party employee has withdrawn a sum of Rs. 57,376.08 P., as shown in Annexure 'E' without posting them in the ledger, but however, got them passed by the manager and misappropriated the same. In that regard, the Enquiry Officer has discussed the evidence of pages 385 to 389. It is not as though the Enquiry Officer has relied upon the evidence of only the Manager. He has scrutinised, examined and then accepted the evidence of the A.C.C. account holders with reference to the books of accounts kept by the bank in the ordinary course of business. In my view the discussion made by him on pages 385 to 388 is invincible.

39. In regard to charges IV (a) and IV (b), it is alleged by the management that the I party employee had manipulated the Agricultural Cash Credit Progressive Balance Book and the Day Book pertaining to interest, commission, exchange amounts and their registers. There is a detailed discussion about the evidence on these points at pages 389 and 390 (in red ink) of the Enquiry Officer. The evidence of the Branch Manager has been accepted by the Enquiry Officer, since it finds support from the documentary evidence maintained by the various officers of the bank in the said branch. The handwriting of the I party employee in regard to these manipulations has been established by the evidence of the Branch Manager and the other witnesses of the said branch. The discussion on that point at pages 389 to 391 has been closely examined and found to be correct.

40. The charges at V, VI and VII deal with the embossing of the audit seal in A.C.C. ledgers. Substitution of original sheets by manipulated sheets and dishonest credit of amounts of Annexure 'F' to the accounts holders of Annexures 'C' and 'D'. Since it has been already established that the credits of Annexure 'C' and 'D' are fraudulent and since there is no proper accounting of the interest, commission and exchange charges due to the bank, it is obvious that the original sheets have been substituted and in the substituted sheets separately there are fraudulent entries. On comparison of the embossing of the genuine sheets and the substituted sheets, it is obvious that the rubber stamps on the latter are patently spurious. The Enquiry Officer has discussed these charges at Sl. Nos. 5 to 7 at pages 392 to 400. In my view the said discussion is convincing. It is thus not a case where any prudent person would not have arrived at the conclusion as arrived at by the Enquiry Officer. It is also not a case wherein the Enquiry Officer has relied upon no evidence, since by actual examination of the original documents, a finding has been recorded independently that the A.C.C. account holders have not drawn these amounts but that the thumb marks and signatures in some cases have been forged by the I party employee.

41. The learned counsel for the I party has relied upon the case of Arjun Singh Vs. Mohindra Kumar (AIR 1964 Supreme Court Page 993). The authority is not pertinent on the point whether the report of the Enquiry Officer is sustainable.

42. Then reference has been made to the case of the workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. Vs. The Management and others (AIR 1973 Supreme Court page 1227). The authority deals with cases wherein the Tribunal may interfere under Section 11-A of the I.D. Act. In the case at hand, the management has established that the I party employee has committed grave acts of misconduct. In my view, it is not a fit case to invoke the provisions of Section 11-A.

43. Reference was then made to the case of Shambhu Nath Goval Vs. Bank of Baroda (AIR 1984 Supreme Court Page 289). The authority is on the point that the management shall have to make an application to lead the additional evidence at the earliest point of time. In the case at hand, no such question arises.

44. The case of Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. (AIR 1979 Supreme Court page 1652) has been cited for the I party. The authority states that there

is no duty cast on the Tribunal to call upon the employer to adduce evidence. The authority is not pertinent.

45. On close scrutiny of the evidence placed before me, I find that the management was justified in finding the I party employee guilty of the charges levelled against him and dismissing him from service with effect from 9-2-1985.

46. In the result, an award is passed to the effect that the management of the State Bank of Mysore was justified in dismissing from service Shri C. A. Kumar, Agriculture Clerk, Malavalli Branch, with effect from 9-2-1985 and that the I party employee is not entitled to any relief.

(Dictated to the Personal Assistant, taken down by her, got typed and corrected by me).

B. N. LALGE, Presiding Officer

[No. L-12012/64/86-D.II(A)]

S. C. SHARMA, Desk Officer

नई दिल्ली, 27 नवम्बर, 1989

का. आ. 3164. :—प्रौद्योगिक विचार अधिनियम, 1947 (1947 का 14) की वारा 17 के मनुसरण में, केन्द्रीय सरकार सिन्डैकेट बैंक के प्रबन्धतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, मनुष्यों में निर्दिष्ट प्रौद्योगिक विचार में प्रौद्योगिक अधिकारण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17 नवम्बर, 1989 को प्राप्त हुआ था।

New Delhi, the 27th November, 1989

S.O. 3164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial dispute between the employers in relation to the Syndicate Bank and their workmen, which was received by the Central Government on the 17th November, 1989.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU, MADRAS-104

Thursday, the 26th day of October, 1989

PRESENT:

Thiru K. Natarajan, M.A.B.I., Industrial Tribunal.

Industrial Dispute No. 31 of 1987

(In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Syndicate Bank, Ernakulam).

BETWEEN

The workman Represented by
The Assistant Secretary,
Syndicate Bank Staff Association,
38/159(3), T. D. Road,
Ernakulam,
Cochin-682001.

AND

The Chairman,
Syndicate Bank, Head Office,
P.B. No. 1, Manipal,

REFERENCE:

Order No. L-12012/290/82-D.II(A), dated 8th March, 1987 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of

Thiru K. Rama Kumar, Advocate appearing for the workman and of Thiru S. Jayaraman, Advocate for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This dispute between the workman and the Management of Syndicate Bank, Manipal, arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/290/82-D-II(A), dated 8th March, 1987 of the Ministry of Labour for adjudication of the following issue :

"Whether the demand of the Syndicate Bank Staff Association, Ernakulam for absorption of Shri Appukuttan Nair, Car Driver attached to the Manager, Syndicate Bank, Shanmugham Road Branch, Ernakulam, in regular service of the Bank on the same wages and other service condition applicable to the other Car Drivers of the Bank is justified ? If not, to what relief is the workman entitled ?"

2. The claim petition averments are that one Appukuttan Nair was an employee of the Bank as will be borne out from the records maintained in the Shanmugham Road Branch of the Respondent-Bank. He is not a personal driver of any particular Manager but attending the bank as Driver under different Managers in the same branch. He satisfies the requirements to fall within the expression "workman" as defined under the Industrial Disputes Act. He discharges his duties which are identical in nature of that of an employee of the Bank. His services are essential for the operations of the Bank. His services were utilised for remittance of cash, visit to clearance house, inspection of godowns and for purposes of Deposit Canvassing all forming part of the bank. The vehicle driven by the driver is owned by the Bank and maintained by it. The salary paid to the workman is also borne by the Bank. The concerned workman is employed in the Bank. He is entitled to the benefits of the regular Class IV employee of the Bank. The action of the Management-Bank in declining to grant the concerned workman the benefits amounts to an unfair labour practice. Hence the employee has been working as the driver of the Bank ever since he was appointed in 1977, had he been the personal driver of the Manager who appointed him in the year 1977, one fails to see how he has been asked to continue as the driver of the Managers who succeeded the manager, who appointed him. Hence the worker is entitled to be absorbed in the regular service of the Bank in the same wages and other service conditions applicable to other car drivers of the Bank. Hence the claim petition.

3. The Respondent-Bank in its counter states the dispute is not maintainable since there is no master and servant relationship between Shri Appukuttan Nair and the Bank under the provisions of the Industrial Disputes Act. He is not under the direct control of the Bank and there is no master and servant relationship between the driver and the Bank. The Respondent Bank has extended car facility to its Executives and Managers considering their responsibilities and position. Such officers who are provided with cars, are permitted to engage personal drivers. The officers can engage personal drivers of their choice and the Respondent-Bank has no power to approve or disapprove the choice. Those drivers are engaged purely on private basis. No appointment orders are issued to such persons by the Bank. Whenever such officers on leave, the Personal driver need not come to work. They do not have any fixed hours of work and they are also not amenable to the disciplinary action by the Bank. The said Appukuttan Nair was not signing in the Attendance Register of the Bank. Hence he is not workman of the Bank and therefore the question of extending the benefits available to other workmen of the bank does not arise. Hence the claim of the Petitioner-Union is totally misconceived and deserved to be rejected.

4. The Petitioner-Union in its reply statement states that the worker is directly employed under the Bank and is under the administrative control of the respective managers and therefore an employee directly engaged by the Bank irrespective of the change of personnel of the Branch Managers. While

the Managers are transferred, the petitioner continues attached to the same Branch. The service particulars of the employee are entered in the log books maintained in the Bank. He is a person attached to a particular branch of the Bank. He cannot have fixed working hours, since it depends on the need of the car for the use of the Bank and its manager. The Bank has no control over the transfer is incorrect.

5. The points for determination are (i) Whether the demand of the Petitioner-Union for absorbing Shri Appukuttan Nair, Car Driver in regular service of the Bank in the same wages and other service conditions applicable to other car drivers is justified ? (ii) To what relief

6. Exs. W-1, W-2 and Ex. M-1 to M-5 were marked on the side of the Petitioner and Management-Bank respectively. No oral evidence was adduced on either side.

7. It is seen from Ex. M-1, Circular, issued by the Respondent-Bank, Provision of Bank's car to all Officers on Senior Management Grade Scale V in the Bank was made. It is only on the basis of this Circular, Appukuttan Nair was appointed as a personal driver some time in 1977 by the then Branch Manager of the Shanmugham Road Branch of Syndicate Bank of Ernakulam. A look at Ex. M-1 reveals that the expenses in connection with petrol, maintenance, insurance, tax etc., of the car would be met by the Bank and the Officer concerned can engage a personal driver if he needs and no bank's driver can be provided. The Circular also fixes the salary of the personal drivers will be reimbursed to the Officers upto the limits given thereunder. Admittedly on the basis of the Circular Appukuttan Nair came to be appointed as a driver of the Branch Manager of the Branch in Ernakulam. Ex. M-5 a Circular dated 8th July, 1983. It modifies earlier Circular relating to enhancement of the drivers salary which is to be reimbursed to the Officers. It is also not in dispute that Shri Appukuttan Nair was performing the duties of driver ever since he was appointed to various Managers of Shanmugham Road Branch of the Respondent Bank in Ernakulam. In short, it is the plea of the learned counsel for the Petitioner that irrespective of the Bank that the Managers are transferred, he is continued to be engaged as a driver by the Bank and therefore he has discharged the duties which are identical in the nature of an employee of the Bank. In other words, the contention is that he is not a personal driver of the Manager, though he has been designated but attends the bank as a driver under different managers in the same branch. In short he falls within the definition of the workman under the Industrial Disputes Act. He would also rely on Ex. W-1, the Photostat Copy of the Log Book maintained in the Shanmugham Road Branch of the Respondent-Bank showing that trips made by the car in official capacity to various places. Strong reliance is made on this document to contend that the driver though has been appointed by the concerned Branch Manager, he has been utilised by the Bank as a driver for official purpose of the Bank and therefore it cannot be contended he does not fall under the expression 'workman' since he is only a personal driver of the Manager. In this connection, the learned counsel for the Petitioner would straightforwardly refer to a decision reported in 1986-L-L. J. 88 (P. M. Patel & Sons vs. Union of India & others) to show there was relationship of master and servant and therefore the employee is the worker within the definition of the Industrial Disputes Act. In the above decision the notifications issued by the Central Government adding beedi industry in the schedule of the Act and bringing the beedi industry within the provisions was challenged as unreasonable restriction on the fundamental right to carry on business and that the home workers are employees does not make the act inapplicable to such workers. This contention was repelled. The Supreme Court held that

"the scheme applied to home workers as is clear from the definition of 'employee' in Section 2(f) of the Act."

It further held

"the terms of definitions are wide enough to include persons employed directly by the employer as also through a contractor and they include persons employed in the factory and persons employed in connection with the work of the factory."

The learned counsel for the Respondent contended this decision is not applicable since the notification issued by the Government was attacked and that never arose the employee concerned in that case was actually an employee and that the relationship of master and servant existed. This contention cannot be brushed aside as having no force. A close scrutiny of this decision discloses, in that case, that the home workers, who received the raw materials, roll the beedies at home and deliver them to the manufacturer subject to the right of rejection clearly shows the requisite degree of control and supervision for establishing the relationship of master and servant between the home workers and the manufacturers.

8. On the other hand the contention of the learned counsel for the respondent is that it is the case where exactly there is no relationship of master and servant and in order to raise a dispute the employee must be a person employed in the establishment. In other words, this element is completely absent in this case in as much as the employee Appukuttan Nair was not employed by the Bank and no order of appointment was issued. It is also his contention that the Respondent-Bank has no choice in engaging the persons as a personal drivers in concerned branches. It is the prerogative of such officers who are provided with cars to engage personal drivers and no driver of the Bank is necessary. Further it is pointed out that those drivers are not signing in the attendance registers maintained by the Bank. In short his contention is that there is no nexus between the employee and the Bank and consequently the driver in this case cannot be held to be a driver appointed by the Bank under the control of the Bank. He urged that the Respondent-Bank is also not competent to take disciplinary action against the driver. Of course, it is pointed out by the learned counsel for the Petitioner that Appukuttan Nair in this case has been appointed in 1977 and is working ever since that date irrespective of the change of Branch Managers and therefore he is a workman entitled to all privileges. But the learned counsel for the Respondent would straightforwardly draw my attention to a decision reported in 1978-I-LJ page 312 (Supreme Court) (Employers in relation to the Punjab National Bank vs. G. Dastagir). In that case one Ghulam Dastagir was a driver employed by the Area Manager of the Appellant-Bank in Calcutta and his salary was paid out of the personal allowance given to the Area Manager of the Bank. The Driver since was terminated, a reference was made to the Tribunal. The Tribunal found he was an employee of the Bank. On appeal before the Supreme Court, the Supreme Court held that,

"There is nothing on record to indicate that the control and direction of the driver vested in the Bank. In the absence of material to make out that the driver was employed by the Bank, was under its direction and control was paid his salary by the Bank and otherwise was included in the army of employees in the establishment of the Bank, it cannot be assumed that the crucial point has been proved. There is no camouflage or circumvention of any statute. There is no nexus between the driver and the Bank. Hence the Tribunal's award has to be set aside."

This decision is directly applicable to the facts of the present case. Here also there is nothing on record to indicate the control and direction on the driver vested in the Bank. Neither the Petitioner-Union examined the driver of the Bank nor any Branch Manager or Officer concerned of the Bank to show that though he was engaged as a personal driver, he was subjected to control and disciplinary action by the Bank. There is also no evidence in this case that apart from the work of the driver, he was also engaged for other duties of the Bank. In short, there is absolutely no evidence. It is also not in dispute that order of appointment had not been issued to the employee by the Bank. On the other hand the Circulars Ex. M-1 and M-5 are unambiguous wherein it has been clearly stated that the Officers will not be provided Bank's driver and if he is to engage a personal driver, whose salary will be reimbursed to the Officer concerned upto the limits given thereunder. Therefore the Circulars are categoric leading to a conclusion, that in no case a driver appointed by the Officer shall be the driver of the Bank. Moreover, the reimbursement of the salary paid to the driver has been fixed to certain limits and it is not open to the Manager of the concerned Branch to claim a higher reimbursement

amount. It is also significant to note, apart from this salary paid to the Officer some allowances provided to the drivers for out station duties and also for utilising the drivers on Sundays and holidays. No other benefit was given to those drivers as per Circulars Ex. M-1 and M-5. It is clear from those circulars that the car is owned and maintained by the Bank and the salary of the driver is to be paid by the Manager of the concerned Bank and not by the Bank itself.

9. Bearing these points in mind it would only go to show as rightly pointed out by the learned counsel for the Respondent that there is no master and servant relationship and therefore Shri Appukuttan Nair is not the worker within the definition of the Industrial Disputes Act enabling him to claim all the benefits under the Act. That apart the learned counsel for the Respondent also drew my attention to a decision reported in 1985-II-LJ page 4 (Workers of F.C.I. vs. F.C.I. of India) (Supreme Court). In that decision the Food Corporation of India has number of godowns and other storage facilities. In order to handle food-grains handling Mazdoors were employed. A contractor was initially engaged to handle storage and transit of food-grains. Afterwards the contract system was abolished and the handling labourers were paid wages directly by Food Corporation of India. A settlement was reached between the Food Corporation of India and the Union when FCI tried to reinduct the contractor as an intermediary. Under this settlement, FCI changed the method and reintroduced the contract system, being in the godown owned as also hired. Bills for the piece rate wages were prepared by the depot staff. This system of direct payment was continued till 1975. Subsequently when FCI changed the method and reintroduced the contract system, FCI also discontinued the employment of 464 workmen attached to the depot and brought in the intermediary contractor and treated the handling workmen as the workmen employed by the contractor. No notice was issued under Section 9A of the Industrial Disputes Act. Hence the dispute arose and was referred to Industrial Tribunal. The Supreme Court has held that

"The essential relationship of person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a 'workman' within the definition of the term as contained in the Act."

Thus this decision has unequivocally expressed its opinion and has held the law that unless a person is employed by the concerned employer, there cannot be any question of his being a 'workman' within the definition of the term in the Industrial Disputes Act. In this case as rightly pointed out by the learned counsel for the Respondent the employee has never been employed by the Bank as its employee and therefore there is no relationship of master and servant. In view of the law laid down in the above decisions and in the absence of any evidence that Shri Appukuttan Nair was actually employed by the Respondent-Bank and was under the control and supervision of the Respondent-Bank, I am constrained to hold that the employee is not a worker entitling to the benefits of the Industrial Disputes Act. For all these reasons, this point is found against the Petitioner.

10. Point (ii) : In the result, an award is passed rejecting the claim of the Petitioner-Union. No costs.

Dated, this the 26th day of October, 1989.

K. NATARAJAN, Industrial Tribunal

[No. L-12012/290/89-D. II (A)]

WITNESSES EXAMINED

For both sides : None.

DOCUMENTS MARKED

For workman :

Ex. W-1/—Photostat copy of page No. 18 of the Log Book maintained in the Shanmugham Road Branch of the Syndicate Bank, Ernakulam.

Ex. W-2/19-10-82—Conciliation Failure Report (copy).

For Management:

Ex. M-1/—Circular regarding payment of Drivers (copy).
M-2/17-7-81—Letter from Personnel Manager of Management-Bank to the Assistant Commissioner of Labour (Central) Ernakulam (copy).

M-3/14-6-82—Letter from Personnel Manager of Management-Bank to the Assistant Commissioner of Labour (Central) Ernakulam (copy).

M-4/25-8-82—Letter from Personnel Manager of Management-Bank to the Assistant Commissioner of Labour (Central) Ernakulam (copy).

M-5/8-7-83—Officer Circular regarding payment to Drivers (copy).

Sd/-

K. NATARAJAN, Industrial Tribunal

का. आ. 3165.—ओद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की ध.रा 17 के अनुसरण में, पंद्रह वर्ष सरकार निलॉनेट बैंक के प्रबन्धतात्त्व के संबंध नियंत्रकों और कर्मचारी के बीच, अनुवध ने निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण, मद्रास के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 3165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the Syndicate Bank Ltd. their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU,
MADRAS-104

Tuesday, the 17th day of October, 1989

Industrial Dispute No. 19 of 1986

(In the matter of dispute for adjudication under Section 10(1)(d) of Industrial Disputes Act, 1947 between the workman and the Management of Syndicate Bank, Madras.

Between the workman

Thiru V. Jayabalan, No. 6, Kamraj Street, Erukkamcheri,
Madras-600051.

AND

The Regional Manager, Syndicate Bank, Regional Office,
150 Luz Church Road, Madras-600004.

REFERENCE :

Order No. L-12012(180)/85-D.II (A), dated 18-2-1986
of the Ministry of Labour, Government of India,
New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru V. Sundarajan, Advocate appearing for the workman and of Tvl. S. Sampathkumar and K. S. V. Prasad,

Advocates for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This dispute between the workman and the Management of Syndicate Bank arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012(180)/85-D.II (A), dated 18-2-1986 of the Ministry of Labour for adjudication of the following issue :

“Whether the action of the management of Syndicate Bank, Regional Office, Madras in not absorbing Shri V. Jayabalan, Sub-Staff in the Bank's service and terminating his services from 30-4-82 is justified ? If not, to what relief is the workman concerned entitled ?”

2. The claim petition averments are that the Petitioner-workman was appointed on 20-3-81 as a temporary attender in the leave vacancy. From that date he was given work continuously till 30-9-82, when his service was terminated. The details of the date and branch in which he worked during that period is attached with the claim statement as Annexure-I. As per Annexure-I he worked 317 days. He served the bank to the best of his ability and there was no complaint against him. Suddenly to his surprise he was not given employment on 30-4-82 for the reasons best known to the bank. He appealed to the higher authorities but it did not yield any result. Finally after conciliation proceeding his matter was referred to this Tribunal. His termination of service on 30-4-82 is illegal and against the provisions of the Industrial Disputes Act. The Petitioner was not given retrenchment compensation and notice as per Section 25-F of the Industrial Disputes Act. Therefore his termination is void and illegal. As per the appointment order given by the Respondent, the Petitioner has worked a total number of 317 days. The Respondent has not produced any documents during conciliation proceedings and hence it is not open to the Respondent to dispute the claim of the workman. Even after deductions the Petitioner has put in 240 days within 12 calendar months and in calculating 240 days the Sundays and other holidays should be taken into account as per the decision in 1961-I-LJ, page 127. The Respondent has violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. The Respondent has confirmed services of several juniors in violation of Section 25-G. The Respondent has also violated Section 25-H since the Respondent did not give any opportunity for this Petitioner. The Petitioner has large family to support and he is without employment from the date of his termination. Hence the termination may be set aside and he may be absorbed from 30-4-82 with backwages and continuity of service.

2. The Respondent states that it is the nationalised banking institution governed by the Guide Lines issued by the Government of India. The Government of India directed the Banks to appoint candidates who have already completed 240 days in service as on 30-4-1982. The Petitioner has not worked for more than 240 days and the Petitioner's claim before the Assistant Commissioner of Labour was 259 days and claimed 278 days in his statement to the Management/Respondent 316 days before the Conciliation Officer and 317 days before this Tribunal. The claim of the Petitioner is based upon the relieving orders purported to have been issued by the various bank's branches. Many of these orders are concocted and forged. The Petitioner produced relieving order purported to have been issued by Perambur Branch to evidence that he has worked for the period from 16-3-82 to 24-3-82, whereas he has worked during that period as per attendance Register of Triplicane Branch. As per the Bank's records during the period 27-3-82 to 12-4-82 he had worked as a temporary attender in the Bank's erstwhile Regional Office, Madras. Similarly his claim for five days from 26-6-1982 to 30-6-1982 has been made on the basis of relieving order purported to have been issued by the Bank's Kodambakkam Branch, whereas that order has been issued by the bank's T. Nagar Branch, after expiry of period of temporary employment from 6-6-1981 to 20-6-81. The date in the relieving order has been altered. He has also claimed that he had worked for the period from 17-7-1981 to 28-7-1981 in the Regional Office of the Bank,

whereas he has worked only in T. Nagar Branch on 21-7-1981 only. The Petitioner resorted to unfair means to support his claim. He was engaged in the Respondent-Bank only as Attender on purely temporary basis against leave vacancies and on the expiry of the periods specified in the appointment order he has been relieved. The Petitioner has worked as attender on a temporary basis for 117 days inclusive of Sundays and holidays from 20-3-81 to 29-4-82. Section 25-F is not applicable to the Petitioner's case since he has not worked for 240 days during the relevant period. Hence it should not amount to retrenchment under the Industrial Disputes Act. Hence the claim may be rejected.

3. The points for determination are (i) Whether the action of the management in not absorbing Petitioner in the Bank's service and terminating his services from 30-4-82 is justified ? (ii) To what relief ?

4. The Petitioner examined himself as WW-1 and marked Exs. W-1 to W-61. The respondent examined the Manager as MW-1 and marked Exs. M-1 to M-10

5. The Petitioner in his evidence would depose that he has worked in all 317 days in the leave vacancies and his salary was paid in the branches where he worked. He would also add that the orders of appointment and other letters received from the bank addressed to him were deposited in the union since he can get permanent appointment only through Union. He would add the Union refused to hand over the documents filed by him, since he objected that the workers juniors to the Petitioner were appointed and subsequently made permanent. In short, he would explain that the Union has got grudge against him and therefore they refused to hand over the original documents and now he produced only xerox copies. Ex. W-38 to W-55 are the xerox copies of the appointment Orders. In the cross-examination he would deny the suggestion that in respect of various documents produced by him were fabricated for purpose of the case and according to the attendance register he has worked less than 240 days and not 317 days as claimed. In order to contradict the witness regarding the number of working days contained in the documents filed by the Petitioner the learned counsel for the Respondent produced attendance registers showing that on many days he had not worked as claimed. Moreover the witness when confronted with the absence of his name in the attendance register and therefore he has not worked, the witness besides denying he would state that on those days he has signed the debt slips, which would show he worked on particular days. However he would deny that he did not work other than the days found in the attendance register. As against his evidence MW-1 would come and swear that the Petitioner was appointed as temporary attender in leave vacancies and whenever he attended duty he would sign the attendance register. The salary is fixed on the basis of days worked by him after verifying the attendance register. Further according to him the salary will not be paid in cash but credited into the account of the staff working in the branch. Thus we see there is oath against oath. Hence it should be seen whether the Petitioner has proved by producing documents whether he has worked for more than 240 days in a 12 calendar months.

6. In this connection the contention of the Petitioner is that Exs. W-1 to W-58 the xerox copy of order of appointment issued by the Respondent-Banks on various dates would go to show the days he worked. It is also urged that if the holidays were also taken into account as per the law laid down by the Supreme Court in 1962-I-L.L.J. at page 127, the Petitioner would have worked not less than 240 days at any cost. In this connection, according to the learned counsel for the Petitioner, since it included paid holidays also including Sundays, it will exceed 240 days. Of course, the Petitioner gave different version of number of days worked on various stages whereas the Respondent would contend that the Petitioner has worked only for 117 days. Anyway now it has to be seen whether the documents Exs. W-1 to W-58 produced by the Petitioner would show the Petitioner has worked for 240 days atleast in a calendar year. In this connection the respondent would vehemently attack these documents have been created for the purpose of the case.

7. Before going into the merits of the case, it should be noted the Petitioner did not produce the original by contending that they were with the Union, who refused to hand over the same. However, the Petitioner has not cared to take steps to produce the documents from the union so as to show his bona fide. That apart it is seen from the documents filed in this case by the Petitioner that the various dates mentioned in those documents are corrected and they have been either added or altered, as contended by the learned counsel for the Respondent.

8. First we take Ex. W-38, which is the xerox copy of the memorandum issued by the Basin Bridge-Respondent Bank's Branch to the Petitioner. It shows that he has been appointed to work in that branch during the absence of K. Nagalingam on leave from 7-4-81 to 24-4-81. He claims 17 days as per this document. But from Ex. M-9 the xerox copy of attendance Register of the staff of the Respondent-Bank for Basin Bridge, shows the Petitioner has worked for 3 days namely, 1, 2 and 7-4-1981. But a close look at the document of Ex. W-38 would show that there is eraser in dates 7-4-81 and 24-4-81 and the handwriting is also different from the date of other dates mentioned in the document. Coming to Ex. W-39, xerox copy of the memorandum dated 8-5-81, shows the petitioner was appointed as a temporary attender to work at the Regional Office for the period of 14 days from 8-5-81 to 21-5-81. But from M-40 the xerox copy of the Attendance Register for the month of May, 1981, it is seen he has not worked not even a single day for the month of May, 1981. A close look of W-39 shows the dates 8-5-1981, 21-5-81 and also the period of days namely fourteen would show some alterations have been made. Ex. W-40 is also a memorandum dated 5-6-81 informing the petitioner that he has been appointed as a temporary attender in the leave vacancy of P. Naganathan from 5-6-81. The xerox copy of the attendance Register for June, 81 is Ex. M-41 wherein his name is not found place. However the date 5-6-81 and 20-3-81 and the names were filled up by some persons. The difference in handwriting in the names and dates show, it should have been prepared for the case. Ex. W-41 is also xerox copy of the memorandum dated 26-6-81 showing the petitioner has been appointed in the leave vacancy from 26-6-81 to 30-6-81. The corresponding xerox copy of attendance register for June 81 is Ex. M-13. As per Ex. M-13 he has not worked for that period. The dates and names shown there indicate different pens were used. Ex. W-42 is also memorandum dated 3-7-81 showing the order of appointment on leave vacancy from 3-7-81 to 9-7-81 in the Egmore Branch Office. Incidentally a look at Ex. M-43 xerox copy of the attendance register shows that he did not work at Egmore Branch. But Ex. M-15 xerox copy of Attendance Register shows that he has worked for one day. Ex. W-43 the xerox copy of memorandum dated 12-7-81 issued by the Petitioner informing him that he is being relieved from Basin Bridge Branch after office hours on expiry of his temporary appointment. Ex. W-44 xerox copy of the memorandum dated 17-7-81 appointing the Petitioner temporarily from 17-7-81 to 20-7-81. As per Ex. M-15 and M-18, the xerox copies of attendance register of Regional Office show that he did not work at the Regional Office. Ex. W-45 is also xerox copy of memorandum dated 30-7-81 for 19 days from 31-7-81 to 18-8-81 issued by the Regional Office. As per Ex. M-18 he has worked in the Regional Office for only one day on 31-7-81. Ex. M-44 is the xerox copy of attendance register showing that he did not work at Regional Office in the month of August 1981. Ex. W-46 is also xerox copy of memorandum showing that he has been appointed for the period 20-8-81 to 24-8-81. Again it is seen for the month of August, he did not work at the Regional Office as per Ex. M-44. Moreover, a mere look at Ex. W-46 the dates at the top 20-8-81 and the middle 20-8-81 and 24-8-81 are written by different pens. Ex. W-47 is also a memorandum dated 16-9-1981 informing the Petitioner that he has been appointed as attender to work in the Perambur Branch for 12 days from 16-9-1981 to 27-9-1981. The corresponding xerox copy of attendance register is Ex. M-46 for the September month. During September, he has worked at Kodambakkam branch for only one day i.e. on 16-9-81. Ex. M-47 xerox copy of the attendance register for Perambur branch for the month of September 1981 shows that he did not work at Perambur at all.

10. Ex. W-48 is the xerox copy of order of appointment dated 3-10-1981 showing the dates 3-10-81 to 12-10-81 for which he was appointed at Perambur branch. The xerox copy of attendance register for the corresponding period under Ex. M-48 wherein the name of the Petitioner does not find place for the month of October 1981. It is seen from Ex. M-48 itself M. A. Balakrishnan has worked on 3-10-81, 10-10-81 and 12-10-81. Again it is pointed out by the learned counsel for the Respondent that Ex. M-48 came to be fabricated by the Petitioner from Ex. W-30, which shows the hand-writing and dates are different. Ex. W-49 is also the xerox copy of order of appointment dated 5-11-81 showing that he was appointed from 5-11-81 to 9-11-81. In this connection the learned counsel for the Respondent would refer to Ex. M-26, xerox copy of attendance register for the month of November, 81. His name is not found in this register. It is seen from Ex. W-49 he has been appointed in the place of Balakrishnan. It is relevant to note that Balakrishnan was on leave only on 10th day alone on which date the Petitioner has worked. Thus again according to the Respondent Counsel that this document is also concocted. This can be seen from the fact that the difference of hand-writing in names and dates when compared with Ex. W-30. Ex. W-50 is also the xerox copy of memorandum showing the appointment of the Petitioner for the period from 14-11-81 to 21-11-81 at Kodambakkam Branch. The corresponding attendance register for that period is Ex. M-45. As per Ex. M-45 he did not work at Kodambakkam at all. Ex. W-51 is the next document dated 11-1-82 showing that he has been appointed to work on 11-1-82 to 18-1-82 at Egmore Branch. As per Ex. M-32 attendance register he worked on 11-1-82 in the place of Rai Kumar whereas Rai Kumar was on duty from 12-1-82 at Egmore Branch. Thus it is clear that he has worked only on 11-1-82 and not other days. Ex. W-52 is the relieving order issued by the Parambhir Branch on the expiry of temporary appointment on 18-1-82. This order shows that he has worked from 12-1-82 to 18-1-82. On the expiry of temporary appointment he will be relieved from service after office hours. As per Ex. M-49 he did not work at Perambur Branch on the said dates. During the same period it is seen from Ex. M-51 he has worked for only one day on 11-1-82 at Egmore Branch. Ex. W-53 is also the xerox copy of intimation of appointment dated 20-1-82 from the Mount Road Office that he has been appointed temporarily from 20-1-82 to 30-1-82. Incidentally it is seen under Ex. M-31 the attendance register relating to January '82 the Petitioner has worked at Regional Office only for one day on 20-1-82. A close scrutiny would show that 30-1-82 in Ex. W-53 appears to have been added. Ex. W-54 is also xerox copy of the order of intimation dated 16-3-82 that the Petitioner has been appointed to work in the leave vacancy in the place of M. A. Balakrishnan from 16-3-82 to 24-3-82. It is brought to my notice by the learned counsel for the Respondent that as per Ex. M-34, attendance registers extract for March '82 relating to Perambur Branch, the Petitioner did not work at Parambhir Branch at all, whereas under Ex. M-36 he worked at Triplicane Branch only for three days from 4-3-82 to 6-3-82. As per Ex. W-54, he has been placed to act as a temporary attender in the place of M. A. Balakrishnan. But M. A. Balakrishnan was on duty during that period till 23-3-82. Moreover a casual look at Ex. W-54 would disclose that dated 24-3-1982 appears to have been altered. Incidentally a comparison with of Ex. W-30 shows the duties and number of dates have been enlarged. Ex. W-55 is the similar xerox copy of memorandum appointing the Petitioner from 13-4-82 to 29-4-82 in the Regional Office, whereas Ex. M-39 is the attendance register according to which he did not work at Regional Office. During March '82 his name does not find place. Ex. W-56 is the relieving order dated 4-6-82 issued by the Central Office that he has been relieved. Ex. W-57 is also a memorandum dated 26-8-1982 appointing the Petitioner for a period of 15 days from 26-8-81 to 9-9-81. But it is urged by the learned counsel for the Respondent that as per Ex. M-21, the extract of attendance register for September shows he did not work during September '81 at the Regional Office. Ex. W-58 is also order of appointment dated 25-3-82, appointing the Petitioner in the absence of Balakrishnan to work from 25-3-82 to 2-4-82 at Perambur Branch. In this connection, as per Ex. M-34 he did not work from 25-3-82 to 31-3-82 at Parambhir Branch. As per Ex. M-50 he did not work in April '82 also. It is relevant to note that as per Ex. M-36, attendance register he worked at Triplicane

on 22-3-82 and as per Ex. M-38 he worked at the Regional Office from 27-3-82 to 31-3-82. It is significant to note that from Ex. M-34 and Ex. M-50 one Sethuraman has worked on those days. It is the plea of the learned counsel for the Respondent that the Original Order Ex. W-58 itself was issued to one Sethuraman and this Petitioner by erasing the name of Sethuraman substituted his name. This contention cannot be lightly brushed aside as having no force. A mere look at the name Jayabalan addressed at the top shows after eraser his name has been written. Incidentally a comparison of 'J', 'b', 'n' with his name under Ex. M-58 is at variance. Thus a perusal of these overwhelming documents filed on the side of the Petitioner would go to show that he has not worked on those days. This fact is clear as can be seen from the attendance registers maintained in various branches. The Petitioner's plea that he has worked for more than 240 days, is not substantiated by producing the original order of appointments except in two cases namely Ex. W-57 and Ex. W-58. It would only lead to the irresistible conclusion that the Petitioner has purposely withheld and has come forward with an excuse that those orders with the Union, who refused to hand over. The bonafide of the Petitioner is in doubt since he refused to take steps to produce those documents from the Union. Thus it is seen the total number of days claimed by him comes only to 183 days, whereas he has worked only less than 60 days. The Petitioner has miserably failed to prove that he worked for 240 days in a twelve calendar months. Thus he having not worked for 240 days, the contention of the learned counsel for the Petitioner that 25-F has been violated, cannot be accepted. As rightly pointed out by the learned counsel for the Respondent that 25-F does not come into the picture at all in so far as the Petitioner has not worked for 240 days. Consequently the other contention that the Respondent has violated Section 25-G and 25-H of the I.D. Act does not arise. Viewed from any angle the Petitioner's claim is totally false and therefore he is not entitled to any relief.

11. In the result, the Petitioner is not entitled to claim any relief. An award is passed rejecting his claim. No costs

Dated this the 17th day of October, 1989.

K. NATARAJAN, Industrial Tribunal

[No. L-12012/180/85-D.II(A)]

WITNESS EXAMINED

For Workmen : W.W. 1- Thiru V. Jayabalan

For Management-- M.W. 1- Thiru N. Srichar.

DOCUMENTS MARKED

For workman:

Ex. W-1/20-3-81 Appointment order to Thiru V. Jayabalan given by Basin Bridge Road Branch.

W-2/23-3-81	-do-
W-3/30-3-81	-do-
W-4/25-4-81	-do-
W-5/27-4-81	-do-
W-6/4-5-81	-do-
W-7/6-5-81	-do- given by Kodambakkam Branch
W-8/7-5-81	-do- given by Regional Office Madras.
W-9/26-5-81	-do- given by B.B. Road, Branch
W-10/(-6-81)	-do- given by T. Nagar Branch
W-11/2-7-81	-do- given by Central Accounts Office.
W-12/10-7-81	-do- given by Regional Office Madras.

13/13-7-81	-do-	given by B.B. Road Branch.	W-47/16-9-81	-do-	by Perambur Branch (Xerox copy)
W-14/16-7-81	-do-	given by Central Accounts Office.	W-48/3-10-81	-do-	
W-15/30-7-81	-do-	given by Regional Office Madras	W-49/5-11-81	-do-	
W-16/19-8-81	-do-	given by Mount Road Branch.	W-50/14-11-81	-do-	by Kodambakkam branch (Xerox Copy)
W-17/23-8-81	-do-	given by Kovalamkam Branch	W-51/11-1-82	-do-	by Egmore Branch (Xerox Copy)
W-18/15-9-81	-do-	given by Regional Office Madras.	W-52/12-1-82	-do-	by Perambur Branch (Xerox Copy)
W-19/28-9-81	-do-	given by Egmore Branch (xerox copy)	W-53/20-1-82	-do-	by Mount Road Branch (Xerox Copy)
W-20/13-10-81	-do-	given by Madras main Branch	W-54/16-3-82	-do-	by Perambur Branch (xerox copy)
W-21/2-11-81	-do-	given by Triplicate branch.	W-55/13-5-82	-do-	by Regional Office, Madras (zerox copy)
W-22/4-11-81	-do-	given by Mount Road Branch.	W-56/4-6-81	-do-	by Central Accounts office.
W-23/10-11-81	-do-	by Perambur Branch	W-57/26-8-81	-do-	by Regional Office, Madras.
W-24/11-11-81	-do-	by Nandanam Branch	W-58/25-3-82	-do-	by Perambur Branch
W-25/12-11-81	-do-	by Nandana Branch	W-59—Pigmy Deposit Challan Receipt No. 996043 for Rs. 8000/- dt. 7-5-84.		
W-26/25-11-81	-do-	by Madras Main Branch	W-60/18-10-85 Letter by Perambur Branch Manager to Thiru V. Jayabalan.		
W-27/7-1-82	-do-	by Regional Office Madras.	W-61/3-3-86—Letter by Assistant General Manager, Development Department, Syndicate Bank, Perambur Branch to Thiru V. Jayabalan regarding mis appropriation.		
W-28/2-2-82	-do-				
W-29/18-2-82	-do-	by Perambur Branch			
W-30/1-3-82	-do-				
W-31/2-3-81	-do-	by Mount Road Branch			
W-32/8-3-82	-do-	by Triplicane Branch			
W-33/9-3-82	-do-	by Nandanam Branch			
Ex.W-34/11-3-82	Appointment order issued to Thiru V. Jayabalan by Perambur Branch				
W-35/27-3-82	-do-	by Regional Office, Madras.	M-2/15-2-85	Letter from the Petitioner-workman to the Management (zerox copy)	
W-36/28-3-82	-do-	by Regional Office, Madras (Zerox Copy)	M-3/11-4-85	Letter from the Petitioner-workman to the Regional Labour Commissioner (Central) Madras giving details of number of days worked by him (zerox copy)	
W-37/29-3-82	-do-	by regional Office, Madras.	M-4/22-5-85	Letter from the Management to the Assistant Labour Commissioner (Central) Madras (Zerox copy)	
W-38/7-4-81	-do-	by B.B. Road Branch (xerox Copy)	M-5/5-6-85	Statement showing date place and number of days worked by the Petitioner-workmen (xerox copy)	
W-39/8-5-81	-do-	by Regional Office, Madras (Zerox copy)	M-6/26-6-85	Letter from Petitioner-workmen to the Management submitting particulars of days he worked in various branches of Management-Bank (Zerox copy)	
W-40/5-6-81	-do-	by B.B. Road Branch (xerox copy)	M-7/	Minutes of conciliation proceedings held on 2-8-85 before the Asstt. Labour Commissioner (Central)-I Madras.	
W-41/26-6-81	-do-	by T. Nagar Branch (xerox copy)	M-8/	Zerox copy of Attendance Register showing No. of days worked by the Petitioner-workman during March 1981 at Basin Bridge Branch.	
W-42/3-7-81	-do-	by Egmore Branch (zerox copy)	M-9/	-do-	April 1981 at Basin Bridge Branch.
W-43/12-7-81	-do-	by B.B. Road Branch (Xerox Copy)	M-10/-	-do-	May 1981 at Basin Bridge Branch.
W-44/17-7-81	-do-	by Regional Office, Madras (Xerox Copy)	M-11/-	-do-	-do- at Kodambakkam Branch
W-45/31-7-81	-do-				
W-46/20-8-81	-do-				

M-12/	-do-	-do- at Mount Road Branch
M-13/	-do-	June 1981 at T. Nagar Branch
M-14/	-do-	July 1981 at C.A.O. Madras Branch
M-15/	-do-	July 1981 at Regional Office Madras.
M-16/	-do-	-do- at Mint Street Branch
M-17/	-do-	-do- at T. Nagar Branch
M-18/-	-do-	-do- at Regional Office
M-19/-	-do-	August 1981 at Mount Road Branch.
M-20/-	-do-	-do- at Kodambakkam Branch
M-21/	-do-	September 1981 at Regional Office Branch
M-22/	-do-	-do- at Egmore Branch
M-23/	-do-	October 1981 at Egmore Branch
M-24/	-do-	-do- at Madras Main Branch
M-25/-	-do-	November 1981 at Mount Road Branch
M-26/	-do-	-do- at Perambur Branch
M-27	-do-	-do- at Nandanam Branch
Ex-M-28/ X-tox copy of Attendance Register showing No. of days worked by the Petitioner-workmen during November 1981 at Triplicate Branch		
M-29	-do-	during November 1981 at Madras Main Branch
M-30	-do-	during December 1981 at Madras Main Branch
M-31	-do-	during January 1982 at Regional Office
M-32/	-do-	during January 1982 at Egmore Branch
M-33/	-do-	during February 1982 at Regional Office Branch
M-34/	-do-	during March 1982 at Perambur Branch
M-35/	-do-	-do- at Mount Road Branch
M-36/	-do-	-do- at Triplicane Branch
M-37	-do-	-do- at Nandanam Branch
M-38/-	-do-	-do- at Regional Office
M-39/-	-do-	during April 1982 at Regional Office
M-40/-	-do-	During May 1981 at Regional Office
M-41/	-do-	during June 1981 at Basin Bridge Branch
M-42/	-do-	during June 1981 at C.A.O. Madras Branch
M-43/	-do-	during July 1981 at Egmore Branch
M-44/-	-do-	during August 1981 at Regional Office
M-45/-	-do-	during November '81 at Kodambakkam Branch.
M-46/-	-do-	during September 1981 at Kodambakkam Branch.
M-47/	-do-	-do- at Perambur Branch
M-48/-	-do-	during October 1981 at Perambur Branch
M-49/-	-do-	during January 1982 at Perambur Branch
M-50	-do-	during April 1982 at Perambur Branch

Sd/-
K. NATARAJAM
Indl. Tribunal

नई विस्ती, 30 नवम्बर, 1989

का. ना. 3166.—शोधोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबन्धनात्मक के संबंध विषयोंको और उसके कर्मकारों के विषय-प्रमुख विषयोंमें निर्दिष्ट शोधोगिक विवाद में केन्द्रीय सरकार और शोधोगिक विवाद, चंडीगढ़ के पंचपट को प्रकाशित करनी है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 30th November, 1989

S.O. 3166.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt hereby publishes the award of the Central Govt. Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I.D. 18/1987

PARTIES :

Employers in relation to the management of Central Bank of India.

AND

Their workmen :

Manphool.

APPEARANCES :

For the workman.—Shri U. Kant.

For the management.—Shri Yogesh Jain.

AWARD

Dated : 27-10-1989

On a dispute raised by Manphool workman against the management of Central Bank of India, Central Govt. vide No. L-12012/186-D.II(A) dated 24th March 1987 referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the Central Bank of India in not appointing Shri Manphool, a part time sweeper at Sector-15-C, Chandigarh Branch as full time sweeper is justified ? If not, to what relief the concerned workman is entitled ?"

2. Case of the petitioner as set out in the claim statement is that he had joined employment of the Resptd. Bank as a part time sweeper in Sector 15-C, branch of the Bank on 1/3 wages from 1st Jan. 1970. Due to increase in the area to be cleaned his wages were enhanced to 1/2 with effect from 1-10-1981. He contends that a vacancy of full time sweeper had arisen at Zonal Staff Training Centre of the Bank but the same has been filled up by making fresh appointment without considering his representation dated 6-2-1985. He submits that another vacancy had arisen in Zonal Office and one Ramesh who was already working on 1/3 wages has been employed as full time sweeper to the discrimination of present petitioner who was even getting 1/2 wages as compared to 1/3 wages being drawn by Shri Ramesh.

3. The management in the reply tool pleads that claim of Shri Manphool was duly considered and as he was not fulfilling minimum criteria for his appointment on full time wages, the persons sponsored by Employment Exchange were interviewed and suitable candidate was given employment. In

the Bank. It is contended that there is no vested right created in favour of the petitioner to claim full time job and it is the discretion of the management to employ full time sweeper. In consonance with the Govt. Instructions and as per recruitment policy, the person sponsored by the employment exchange was given employment against vacancy which arose on the death of Smt. Maya Devi. It is pleaded that there was no vacancy of full time sweeper at Sector 15-C Branch of the Bank with respect to which the matter has been referred for adjudication.

4 Parties were allowed opportunity to lead evidence in support of their rival claims. Manphool Petitioner filed his affidavit Ex. W1 reiterating the allegations made in the petition. During his cross-examination he admitted that he is educated up to first HInd standard. He also admitted that there was no full time sweeper in Sector 15-C Branch of the Bank at Chandigarh. In rebuttal the management filed affidavit Ex. M1 of Shri R. K. Mankad Chief Manager Zonal Office Chandigarh to the effect that recruitment in the sub-staff cadre in the Bank is made in strict adherence to the Govt. directives whereby the persons are recruited from the lot sponsored by Employment Exchange. He has solemnly affirmed that Manphool Petitioner had no vested right to get full time wages at different premises in occupation of the Bank and claimant was not fulfilling the eligibility criteria to be given full time employment. He has further affirmed that no person junior to Shri Manphool and in the service of the Bank as part time employee at the relevant time has been given full time employment.

5. Manphool workman who is presently working as part time sweeper in Sector-15, C Branch of the Bank at Chandigarh seeks his employment as full time sweeper. He contends that he should have been preferred to the candidates sponsored by Employment Exchange for fulfilling post of full time sweeper in the Zonal Office Training Centre at Chandigarh. He relies upon para 20.6 of Chapter XX of Bipartite Settlement dated 19-10-1966 which reads as under :

"Subject to a Bank's recruitment rules, if any, part time employees will be given preference for filling of fulltime vacancies, other things being equal."

Case of the management is that representation of the workman Manphool was duly considered but since he did not fulfill minimum criteria prescribed for employment on full time wages, one of the candidates sponsored by the Employment Exchange was selected for employment on full time wages. Representative of the management has placed on file Bank's letter No. CO. PRS: REC:85:585 dated 10th April 1985 from Deputy General Manager to Zonal Manager Zonal Office Chandigarh the perusal of which shows that minimum educational qualification for conversion of existing permanent part time sub staff as full time is the candidates must have passed minimum 5th Standard. Manphool workman admittedly educated up to 1st/2nd standard which is less than minimum eligibility condition. His grievance is that he should have been preferred for posting on full time sweeper in the Zonal Office Training Centre. It is none of his case if he was senior most part time sweeper in the branches under the Zonal Office. There is solemn affirmation of the Chief Manager Zonal Office, Chandigarh that no person junior to Manphool and in the service of the bank as part time employee at the relevant time has been given full time employment. Shri Manphool who did not fulfil eligibility criteria had no vested right in his favour to claim full time job and it was within discretion of the management to employ full time sweeper in consonance with the Govt. instructions and as per its policy of recruitment. In view of the eligibility criteria laid by the Bank Shri Manphool had no preferential right to invoke under para 20.6 of the Bipartite Settlement dated 19-10-66. The act of the management in recruiting a candidate sponsored by Employment Exchange in preference to Manphool a part time sweeper does not suffer from any legal infirmity.

7. Reference is therefore, returned with the findings that action of the Central Bank of India in not appointing Shri Manphool a part time sweeper at Sector-15, C Branch of

the Bank at Chandigarh as full time sweeper is justified and petitioner is not entitled to any relief what-so-ever. Chandigarh.

27-10-1989.

M. S. NAGRA, Presiding Officer
[No. L-12012/186/86-D.II(A)]

का.पा. 3167.—श्रीओरिगिक विकाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार दैनंदिन के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में तिनिट श्रीओरिगिक विकाद में केन्द्रीय सरकार श्रीओरिगिक अधिकरण, नं. 1, अम्भई के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार के प्राप्त हुआ था।

S.O. 3167.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, No. 1, Bombay as shown in the Annexure in the Industrial dispute between the employers in relation to the Bank of Maharashtra and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY

Reference No. CGIT-14 of 1987

PARTIES :

Employers in relation to the management of Bank of Maharashtra.

AND

Their workmen

APPEARANCES :

For the Management.—Mr. Nizampurkar, Officer.

For the Workmen.—Mr. V. P. Vaidya, Advocate.

INDUSTRY : Banking. STATE : Maharashtra.

Bombay, dated the 10th day of June, 1988

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication to this Tribunal :—

"Whether the demand of Bank of Maharashtra Karmachari Sangh and their members requesting for Casual Leave during the period of demonstrations at Laxmipuri Branch and Divisional Office, Kolhapur is justified and whether there has been any discrimination/victimisation by the management of Bank of Maharashtra Divisional Office Kolhapur for having refused the same ? If not to what relief the workmen are entitled and what directions are necessary in this respect "

2. The dispute referred for adjudication in this reference was raised by the Bank of Maharashtra Karmachari Sangh (hereinafter referred to as 'Sangh'). The main grievance of the Sangh is that the treatment of the management to the activists of the Sangh is discriminatory in that certain rules and regulations as well as circulars having binding effect are not being followed strictly in respect of the activists of the other Union namely All India Bank Employees Association (A.I.B.E.A.) whereas actions are being taken under those rules, regulations and circulars against the activists of the Sangh for similar activities. According to the Sangh as and when agitations and strikes were undertaken by the

Sangh, deductions were made from the salary of the activists of the Sangh, memos were issued and even leave applications made on the particular dates on which agitational activities were commenced by the Sangh came to be rejected whereas no such actions were taken by the Bank against the activists of All India Bank Employees Association. The Sangh further contended in the statement of claim filed by the President that during the agitation and strike programme declared by the All India Bank Employees Association for 4th, 5th, 8th, 9th and 11th of March, 1985, one Shri S. R. Jamadar, a Typist working in the Central Zone-II of the Kolhapur Office of the Bank of Maharashtra was granted special permission to leave the premises of the Bank for participating in the agitational activities announced by the Association, ignoring the circulars issued by the management itself on 20-6-1983, and 1-3-1985 giving specific directions how and what action should be taken against the employees participating in strike and other agitational activities. According to the Sangh it addressed a letter dated 8-3-1985, calling upon the Bank to state under what circumstances permission was granted to Shri Jamadar and why he was allowed to leave the Office premises at 2.30 p.m. as a special case. By another letter, the Divisional Secretary of the Sangh, had pointed out to the management names of 12 members of All India Bank Employees Association, who had left the premises of the Bank and participated in the agitational programme announced by the association. By another letter dated 9-3-1985, the Sangh informed the names of 9 employees who had participated in the Union activities of the association and against whom no action was taken by the management. The Sangh was informed that the matter was referred to the Assistant General Manager (Personnel) H.E.M. Office, Kolhapur. By another letter dated 24-5-1985, it was informed that Shri Jamadar had applied for casual leave on 6-3-1985 however, due to acute staff position on that day he was asked to work and then he was allowed to leave the office early as a very special case. The Sangh made a grievance that during the agitational programmes staged by the Sangh during the period between 3-6-1985 to 9-6-1985, the applications given by the activists of the Sangh for casual leave on 6-6-1985, to participate in the agitational programme and for domestic purposes were rejected. Similarly, the application given by Shri A. M. Toro, another activists of the Sangh, for changing the time of his recess to enable him to participate in the demonstration held by activists of the Sangh on 3-6-1985, was rejected and even though he was actually present in the Office on that day his signature was cancelled and he was marked absent for the whole day.

3. In its written statement the Bank contended that the demand made by the Sangh is itself illegal and unjustified one because in the first instance leave cannot be claimed as a matter of right and no prudent employer can be expected to grant casual leave en masse in the wake of threatened disruption of service. The Bank further maintained that although the Bank does not wish to put any embargo or restrictions on the fundamental right to participate in peaceful demonstrations on the part of unions and their members, it cannot, at the same time give an unfettered right to its employees to claim leave for participating in demonstrations. The Bank further maintained that the Banking industry is declared as a public utility service and as such it was necessary for the Sangh to give a due notice of strike as per provisions of the Industrial Disputes Act, 1947, when it wanted that their member employees should participate in the agitational programme including demonstrations. But instead of following this right course, the Union was not justified in advising its members to apply for casual leave during the period of demonstrations and making further demand that the leave should be granted by the management. According to the Bank, by not taking steps in right direction, the union itself indulged in unfair labour practice and if the Bank would have granted casual leave on mass basis it would have been looked upon as indirectly instigating/abetting the action of the Union to proceed on illegal strike. The Bank further contended that after the Union raising the present dispute had announced certain programme of agitation during the period between 3-6-1985 to 9-6-1985 the Bank which had to cater to the needs of its customers for providing smooth and efficient service, had issued guidelines to all its

branches and offices by circular dated 28-5-1985, giving suitable instructions to deal with any eventuality that may arise due to the call given by the Union, one of the instructions being rejection of leave. The Bank further maintained that in the possible apprehension of disruption of service due to the call given by the Union, the authorities had to reject the leave applied during the period of agitation and member employees of the Union, raising the dispute could not be said to be justified in the wake of any such call to apply for casual leave. The Bank maintained that it had not made any discrimination between the Unions and as per the prevailing practice deductions equivalent of one day's wages were made from the salary of the employees who responded to the call given by the A.I.B.E.A. But no such action could be taken against the employees who took part in the agitational activities declared by the Sangh during the period between 3-6-1985 and 9-6-1985 because the Sangh forestalled it by giving a notice of strike on 12-6-1985. The Bank therefore contended that by giving notice of strike on 12-6-1985, the management was indirectly forced to make discrimination in favour of the members of the Sangh. The Bank denied the allegation in relation to not following the rules and regulations as well as circulars in respect of the activities of the rival union and maintained that all decisions of the Bank were actuated by giving prime importance to smooth and efficient running of the business of the Bank. According to the Bank, the rival union All India Bank Employees Association held the demonstration during recess period of Laxmipuri Branch on 6-3-1985, and as such the question of taking action against the participating employees including Shri S. R. Jamadar, contemplated by circular dated 21-3-1985, did not arise at all. The Bank further submitted that Shri A. L. Patil, Smt. N. Y. Kulkarni, Smt. S. D. Kulkarni, Smt. M. S. Purohit and Shri S. R. Pandit who were working as clerks in Laxmipuri Branch, first gave cyclostyled applications for casual leave for participating in the agitational programme announced by the Sangh and after these applications were rejected by the Branch Manager by letter dated 5-6-1985, as per Central Office guidelines these employees re-submitted applications for leave on domestic ground but the same were also rejected. According to the Bank, the letter of 5-6-1985, containing the decision of rejection of leave was tried to be delivered to these employees but since they had left the office on that day without waiting for a decision on their applications, the same was required to be delivered on 7-6-1985. The Bank further stated that the application given by Shri Toro for change of his recess time on 3-6-1985, was not granted by the authorities and Shri Toro who left the office at 2.30 p.m. which is the usual time of his recess did not return to his place of work thereafter and hence he was required to be marked as absent as per guidelines issued by the Central Office.

4. From the evidence led and the material placed on record by the Sangh it is difficult to accept the charge levelled against the management of the Bank that it showed favouritism to the activists of AJBEA and discriminated against the activists of the Sangh and that refusal of casual leave to the activists of the Sangh during the period of demonstrations at Laxmipuri Branch and Divisional Office at Kolhapur was the result of such discrimination.

5. The Sangh had announced agitational programme during the period from 3-6-1985 to 9-6-1985. The programme was announced on 15-5-1985. The Bank in order to meet the situation that may arise in view of the agitation, issued the circular Exh. M-4 on 28-5-1985 giving suitable instruction in that behalf. Attention of all the concerned officers of the Bank were drawn to the earlier circulars dated 1-3-1985 and 9-3-1985 and they were directed to ensure that the working of the Bank did not suffer on account of the agitational programme and to take actions as per those circulars. The circular dated 1-3-1985, which is produced at Exh. M-11 refers to earlier circulars issued for the purpose of ensuring smooth and efficient working of the Bank during the agitational programmes embarked upon by the Unions. One of the guidelines was to reject applications for casual leave given en masse by the employee with the object of participating in the agitational activities.

6. It is an admitted position that on 6-6-1985, on which date Shri A. L. Patil, Smt. N. Y. Kulkarni, Smt. S. D.

Kulkarni, Shri M. S. Purohit, and Shri S. R. Pandit, had applied for casual leave the Sangh of which all these employees were members, had announced a sit-down demonstration for the whole day in front of all administrative offices of the Bank. According to the Bank, these employees first gave cyclostyled applications for casual leave on 6-6-1985, mentioning therein that leave was required to participate in the agitational programme and that after these applications were rejected fresh applications were given for casual leave on the ground of domestic purpose. At the hearing of this reference, the Sangh tried to make out a case that the causal leave was not asked for participating in the agitational programmes, conveniently forgetting the case which was made out by the Sangh in its statement of claim. In the statement of claim filed by the President of the Sangh it is categorically asserted that the casual leave was asked for participation in the agitational programme and for domestic purpose. Obviously, leave could not have been asked for participating in sit-down demonstration (Dharna) and domestic difficulty simultaneously. It is also an admitted position that all these employees participated in the demonstration; they were marked absent and their wages for that day were directed to be cut though actually cut was not effected as it was forestalled by the Sangh by giving a strike notice. It is therefore clear that all the five employees applied en masse for casual leave purely for the purpose of participating in the agitational programme. No management is expected to grant casual leave which is asked for participating in any agitational programme. The action of the concerned officers of the Bank in refusing the casual leave and marking them absent on that day was perfectly justified. This refusal no doubt would have amounted to discrimination against the activists of the Sangh if such indulgence was shown by the Bank to the activists of the rival union. Apart from the fact, that the Sangh could not establish that in fact any such indulgence was shown the Bank has established that strict action was taken against the members of the rival union for similar activities.

7. It appears that AIBEA, had drawn up a programme of agitation and strike during March 1985. As per the said programme, different types of agitational activities were planned on 4th, 6th, 8th, 9th and 11th March, 1985. As per this declared programme the employees who were members of AIBEA struck work for two hours during business hours on 11-3-1985. It is in evidence that wages of all employees who participated in the strike were cut as directed by the Bank circular dated 21-3-1985. Even though Shri D. R. Shirodkar, who was the Zonal Secretary of the Kolhapur Zone of the Sangh expressed blissful ignorance about this action taken by the Bank against the members of the rival union Shri A. D. Bramhe, who was working as Lead Bank Officer at Laxmipuri Branch Kolhapur on 11-3-1985, has specifically stated in his affidavit of evidence that wages equivalent to a day's salary were deducted from the salary of the employees who participated in the strike of two hours on 11-3-1985, in response to the call given by the Union affiliated to AIBEA. He also filed a statement showing names of the employees whose wages were cut and the amounts which were deducted from their salary. Shri Bramhe was not cross examined on this point and his evidence remained completely un-challenged. He also went on to affirm that wages equivalent to one day's salary in respect of those employees whose casual leave application dated 6-6-1985, were rejected and who participated in the demonstration were deducted in June 1985 but the deductions were required to be reversed in view of the Central Office Circular informing that the Sangh had raised an Industrial Dispute. It is therefore futile to contend that the rejection of applications for casual leave on 6-6-1985, given by Shri A. L. Patil and others was wrong and discriminatory.

8. Only other instance of alleged discrimination, which is pressed into service is the action against Shri Toro and the indulgence shown to Shri Jamadar. Shri Toro had asked for change of his recess timings on 3-6-1985 for participating in the lunch time agitation launched by the Sangh on that day. His usual recess time was from 2.30 p.m. to 3.00 p.m. and he had requested for changing the recess time from 3.00 p.m. to 3.30 p.m. on that day. This request was not granted, and rightly so, because the regular recess timings cannot be changed merely for the purpose of enabling the

concerned employee to participate in the agitational demonstration which was to be held at some other branch where the recess time was different. The fact that he was the Divisional Secretary of the Sangh did not entitle him to the said indulgence. It is true that the Bank marked him absent for the whole day on the ground that he did not turn up after his usual recess time and deducted one day's salary from his wages. The Bank was perfectly justified in doing so. Shri Toro, was no examined to state that he did return for work after recess was over and was present in the Bank throughout the remaining part of the day. Apart from this factual position in his cross-examination Shri Shirodkar has admitted that the cut from the salary of Shri Toro was subsequently restored.

9. The grievance of the Sangh is that while refusing the request of Shri Toro for change of his recess timings to enable him to participate in the demonstration, the Bank granted similar indulgence to Shri Jamadar, who wanted to participate in the demonstration staged by the AIBEA on 6-3-1985. On that day, the application for casual leave given by Shri Jamadar, was rejected but he was granted the indulgence of leaving the Bank early. However, it is not established that Shri Jamadar participated in the demonstration. Even assuming that he did so it cannot be said that the Bank showed him some indulgence for participating in the demonstration because the demonstration was held not during working hours but during the recess time. Moreover, though Shri Jamadar was not examined to state the circumstances under which he was allowed to leave the Bank early Shri Vasant Ghodke, who was working as Officer in the Office of the Assistant General Manager at Kolhapur, has specifically stated in his affidavit of evidence that although the application of Shri Jamadar was rejected, he was allowed to leave the office after 3.00 p.m. to enable him to attend to the domestic work for which he had applied for casual leave. In his cross examination, he further stated that at about 3.00 p.m. Shri Jamadar received a phone call from the hospital and hence he was allowed to go. Moreover, on the basis of a solitary incident the serious charge of discrimination and favouritism amounting to unfair labour practice levelled against the management of the Bank generally cannot be sustained. It is possible that a particular officer in a particular branch may be favourable to the rival union, but that does not mean that the management of the Bank can be said to be interested in sponsoring one union and suppressing the other. At any rate the Sangh has not placed on record enough material to justify the accusation.

6. In the result, therefore, it is declared that the action of the Bank in refusing casual leave to the members of the Sangh during the period of demonstrations at Laxmipuri Branch and Divisional Office at Kolhapur was justified and did not amount to discrimination or victimisation or unfair labour practice. The concerned workmen therefore, would not be entitled to any relief. Award accordingly.

M. S. JAMDAR, Presiding Officer
[No. L-12011/49/86-D.II(A)]

का.आ. 3168.—ओर्योगिक विवाद अधिनियम 1947 (1947 का 14) की ध.रा 17 के अनुसार में केंद्रीय सरकार अधिकारीय भारतीय पंजाब नेशनल और हमर्डर्ड एम्प्रियोजन ग्राहक पञ्चानन वैकें फै लिलाफ उम्म अधिनियम की ध.रा 13 के प्रधान व यर का भृष्ट जितायत के अवधार में यत्नव्य निरिष्ट ओर्योगिक अधिकारण भृष्टमद वाद का पत्रां जैसे कि अनुर्ध्व में है, प्रकाशित करना है। यह पत्रां केंद्रीय सरकार को प्राप्त हुआ था।

S.O. 3168.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in respect of complaint under section 33A of the I.D. Act filed by the All India Punjab National Bank Employees' Association against the Management of Punjab National Bank which was received by the Central Government.

ANNEXURE
BEFORE SHRI G. S. BAROT, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL (CENTRAL) AT
AHMEDABAD
Complaint (ITC) No. 2 of 1979

IN

Reference (ITC) No. 2 of 1976

Reference (ITC) No. 5 of 1976

All India Punjab National Bank Employees' Association,
898, Nai Sadak, Chandni Chowk, Delhi-6.

Complainant

Versus

Punjab National Bank, Head Office, 5-Parliament Street,
New Delhi with its Regional Offices at : Sheth
C. G. Road, Panchavati, Ellis Bridge, Ahmedabad
and Express Towers, Nariman Point, Bombay-21.

Respondent.

In the matter of a complaint under Section 33-A of the
Industrial Disputes Act, 1947.**APPEARANCES :**

Shri K. R. Mehta, Advocate—for the Complainant.

Shri K. V. Shah, Advocate—for the Respondent.

AWARD

This is a complaint under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The complaint is the union known as All India Punjab National Bank Employees' Association (hereinafter referred to as 'the complainant'). The complaint filed is against Punjab National Bank (hereinafter referred to as "the Bank"). The case of the complainant (union) is that it is a Trade Union registered under the Trade Union Act, 1926. It is a bona fide association of the workmen employed in the Bank herein. It is scattered over different parts of the country having substantial number of membership. It is the say of the complainant that besides the complainant union there is also another union by name All India Punjab National Employees' Federation (hereinafter referred to as "the Federation") and also All India Punjab National Bank Staff Federation. That none of the three unions is recognised by the Bank. It is the case of the complainant that the said Federation has always been in collusion with the Management Bank and in order to prejudice with malice and ulterior motives the interest of the workmen and to prevent the complainant from discharging social obligations and duties towards the workmen have joined hands.

2. The complainant says that the two industrial disputes raised by the complainant bearing Reference (ITC) No. 2 of 1976 and No. 5 of 1976 are pending for final hearing before the Tribunal and during the pendency of the above-said references the Bank has arrived at settlement dated 5-5-1979 with the Federation which is nothing but the result of collusion and illegal action of the Bank. It is the say of the complainant that by the said settlement of the Bank has altered and changed the beneficial standing orders of the workers; that it has been done to circumvent the benefits which have already been accrued to such workmen under the conditions of service at the time of their employment and the result of statute, adjudication and settlement and the old customary practices having become rules. It is the say of the complainant that this has been done with the sole intention to deprive the workmen of their lawful and accrued rights; that the Bank had not called the complainant union and hurriedly entered into an agreement with the Federation which is contrary to law; that it has been learnt by the complainant that the Bank has started implementing the said prejudicial settlement inducing the

workmen and our members to sign a declaration which, in fact, is against the law. It is, therefore, the case of the complainant union that the Bank has not deliberately wilfully and maliciously and with ulterior motives contravened the provisions of Sections 33(1)(a) and 33(3)(a) of the Act and thereby changed the conditions of service applicable to the workmen working in the Bank. Hence the present complaint.

3. The Bank has filed its written statement at Ex. 2 contending, inter alia, that the present complaint is misconceived and liable to be summarily dismissed; that Section 33 of the Act is only attracted in cases where the proceedings relating to an industrial dispute which affect the general conditions of the service of the workmen as a class are pending adjudication before the Tribunal. The intention of Section 33 of the Act is that the employer would do nothing during the pendency of the proceedings which would alter conditions of service to the prejudice of the workmen concerned in the dispute. Thus, Section 33 puts an embargo only on the employer altering the conditions of service to the prejudice of the workmen concerned in the dispute and Section 33 is not attracted in cases where action is not taken by the employer unilaterally but as a result of any proceedings under the Act or other legislation. It has then submitted that it would be attracted in cases where standing orders are certified under the Industrial Employment (Standing Order) Act, 1946 or certain statutory rules are brought into force or settlements are arrived at under the machinery set up under the Act. It is the say of the Bank that in the present case the pendency alleged is of two individual cases viz. Reference (ITC) No. 2 of 1976 and No. 5 of 1976 which relate to two individuals and there is nothing adverse to them settled under the impugned settlement because existing cases have been specifically excluded from the scope of the settlement. That the complainant union viz. Punjab National Bank Employees' Association has no locus standi to file the present complaint inasmuch as the complaint under Section 33-A of the Act is maintainable only by the workmen concerned and as such the complaint is liable to be dismissed. The two references stated above are in respect of Shri P. D. Patel and Shri A. B. Shah for their individual confirmation/termination from different dates and, therefore, also the present complainant is not at all in any way, the workman concerned in those disputes and, therefore, also the complaint is not maintainable. That the complainant has alleged contravention of Section 33 because of entering into settlement dated 5-5-1979 between the Management of the Punjab National Bank Employees' Federation which settlement has been entered into during the conciliation proceedings before the Deputy Chief Labour Commissioner (Central) and the Conciliation Officer and the above settlement being in conciliation proceedings cannot be challenged by way of present complaint. It was also submitted that the jurisdiction of judgement over the settlement. That the settlement is a Tripartite Settlement and Section 33-A is available only when there is unilateral action by the employer to the prejudice of the conditions of service of the workmen concerned. Hence also Section 33-A is not attracted; that the settlement dated 5-5-1979 has given much and substantial benefits to the general body of the workmen and the same have been accepted by them including the members of the All India Punjab National Bank Employees' Association and therefore, it cannot now be said that the said settlement is illegal. That having accepted the benefits under the settlement it cannot lie in the mouth of complainant to make any grievance about the settlement; that the settlement dated 5-5-1979 is not in any prejudicial to rights and claims of the Association or in any way alters the service conditions to the prejudice of the workmen. It was hence requested that this be tried by way of preliminary objection which touches the root of the matter. Besides taking the preliminary objection the Bank has also submitted on merits. The Punjab National Bank Employees' Federation has a majority of the membership amongst the employees of the Bank; that settlements have been mostly signed either mutually or during conciliation proceedings with the Federation. The allegation about the collusion, malice and ulterior motives have been completely denied. It was submitted that the Management has entered into a valid and legal settlement

during the conciliation proceedings on 5-5-1979 giving much and substantial benefits to its employees. The employees have been given benefits which they would not have otherwise been entitled to under the Banking award or Bipartite Settlements and the same has been accepted by the members of the present complainant union also; that the impugned settlement is arrived at in conciliation proceedings and, therefore, it is binding on all the workmen under Section 11(3) of the Act and the same is not vitiated on any count as alleged by the complainant. According to the Bank there has been no violation of Section 33(1)(a) or Section 33(3)(a) of the Act. As the settlement has been arrived at during the conciliation proceedings, there has also been no violation of Section 9-A of the Act and that there is no change made in the conditions of service to the prejudice of the workmen; that Section 9-A is not attracted in a case where change in conditions of service has been brought about by settlement. On the grounds stated hereinabove it was submitted that the complaint deserves to be dismissed.

4. Considering the facts of the case, it has first to be decided as to whether the present complaint, made as such is maintainable or not? The relevant provisions can be found in Section 33 and 33-A. For the purposes of this case the relevant sub-section of Section 33 is sub-section (1) which is as under:—

33(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of any industrial disputes, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

5. For the purposes of this case the important phrase is 'the workman concerned' in such dispute. The sub-section will apply only if the workman is concerned in the pending dispute. The Union in the present case has cited two industrial disputes viz., Ref. (ITC) No. 2/76 and 5/76 as pending before this Tribunal when the impugned action was taken. It has been contended that the workmen in this complaint are the workmen concerned in the outcome of the above two references. As against this it has been contended by the Bank that both these references, viz., Reference (ITC) Nos. 2/76 and 5/76 are individual disputes and it has nothing to do with the demands made therein, so to say it is the contention of the Bank that the workmen of this complainant union cannot be said to be concerned workmen. That today both these references have been disposed of but it has to be considered whether on the material date i.e. the date on which the impugned action of the Bank was taken the said two references were pending or not. But then again it has to be seen whether the workmen herein can be said to be the concerned workmen or not.

6. It has to be noted that the present complaint has been made under Section 33-A of the Act. It is pertinent to note that the complaint u/s. 33-A would not lie unless there is a breach of any of the provisions of Section 33 of the Act. Now it is for the complainant to show that the Bank has committed a breach of the provisions of Section 33. According to the Union the Bank has committed breach of Section 33(1)(a) which means that during the pendency of conciliation proceedings before a conciliation officer the employer has made a change in regard to any matter connected with the dispute to the prejudice of the workmen concerned in such dispute. We have, therefore, to see whether the Bank has altered or made any change in the conditions of service of the workmen as alleged.

7. The object of S. 33 is to protect the workman concerned in disputes which form the subject matter of pending proceedings against victimization by the employer on account of their having raised the industrial disputes or their continuing pending proceedings. The further object is to ensure that proceedings in connection with industrial disputes already

pending should be brought to a termination in a peaceful atmosphere and that no employer should, during the pendency of these proceedings, take any action of the kind mentioned in the section which may give rise to fresh disputes likely to further accelerate already strained relations between the employer and the workman. To achieve this object a ban, subject to certain conditions, has been imposed by S. 33 on the ordinary right of the employer to alter the terms of his employee's service to their prejudice or to terminate their services under the general law governing contract of employment. S. 33A provides for relief against contravention of S. 33 by way of adjudication of the complaints by aggrieved workman considering them to be disputes referred to or pending in accordance with the provisions of the Act.

8. The Union, in support of its case, has examined one Chinnalal Bhardwaj at Ex. 8. He deposed that he is General Secretary of All India Punjab National Bank Employees' Association. He has further deposed that this Association has entered into a number of settlements with the Bank authorities. That the Bank has now entered into a settlement with another union, viz., All India Punjab National Bank Employees' Federation on 5-5-1979. He has also deposed that by entering into the said settlement with another union the Bank has effected a change in the existing conditions of service of the employees of the Bank. That no notice as contemplated u/s. 9-A of the I.D. Act was given to our union or directly to the concerned workmen. This settlement was arrived at during the pendency of conciliation proceedings before the Conciliation Officer at Delhi. That by the said settlement the Bank has brought about a change in the conditions of service of the employees of the Bank.

9. The next witness examined by the union is one Shri Mehrotra at Ex. 15. He is the President of Punjab National Bank Employees' Association. In his evidence he has simply stated about the production of certain documents viz., settlements, circulars, etc. etc.

10. On behalf of the Bank one Rana Kamlesh has been examined at Ex. 47 who has stated that he is the Personnel Officer in the Bank. He was shown circular Ex. 48 which according to this witness is in connection with the settlement dt. 5-5-79. In his cross-examination he has stated that at the time the settlement dt. 5-5-79 was entered into, the references were pending before the Tribunal. That under the terms of settlement these cases have been excluded; that no permission of the Court has been taken before entering into settlement. He has however denied that the Bank has altered conditions of service of its workmen or that any breach as alleged by the union (complainant) is made.

11. From all the above evidence it appears that the impugned grievance of the Union is that while the two references were pending before the Tribunal the Bank should not have entered into the settlement dt. 5-5-79 and by entering into the said settlement, the Bank has committed breach of Sec. 33(1)(a) of the Act.

12. Shri R. A. Mehta representing the Union and Shri K. V. Shah representing the Bank have argued in support of their case.

13. Shri Mehta representing the Union has simply drawn the attention of the Tribunal during the course of his arguments that some references were pending before the Tribunal, viz., Ref. (ITC) Nos. 2/76 and 5/76. The Union has objection to clause (12) of the settlement dt. 5-5-79 which says that it is agreed that this settlement shall not cover the cases of such of the workmen as were appointed initially on temporary basis but were subsequently appointed either on permanent basis or as probationary whose demands relating to the regularisation of their services and consequential benefits thereon are pending adjudication as on date. Now as it is well settled that the complainant has to show that the Bank has effected a change which is prejudicial to the interest of the workmen concerned. Firstly, therefore, it has to be seen that the workmen, who are alleged to have been affected adversely, can be said to be workmen concerned.

Now as we have seen that the Reference (ITC) Nos. 2/76 and 5/76 pertain to Shri P. D. Patel and Shri M. B. Shah. They were individual disputes pertaining to termination of their services. Now, it is clear that the complaint has been filed because the Bank has entered into a settlement with another Union viz., the Federation and their union viz., the Association was not called or asked to remain present. It is also their say that the workmen belonging to their Union have been prejudicially affected. Now it has come on record that the workmen of the complainant Union have also received the benefits under the settlement dt. 5-5-79. Moreover, Shri Mehta appearing for the Union has not shown how the workmen of the complainant Union can be said to be the concerned workmen. By now it is well settled law that there should be some common feature in the nature of the dispute but here it is not shown to be so. As against that Shri K. V. Shah who is appearing for the Bank has contended that the Bank has not altered any conditions or condition of service of the members of the complainant union. On the contrary it is his case that it is under an agreement that the workers have been getting the benefits and that too even the workmen of the complainant/Union. It was also contended by Shri Shah that the complainant Union is not a majority Union while the other union with which the settlement has been entered into holds the majority of members with it. It has also to be noted that when the employer has entered into a settlement with the majority Union and if the settlement is fair and reasonable then the said settlement has to be acted upon. In the instant case Shri Mehta appearing for the Union has not even tried to show before the Tribunal during the course of his arguments that the said settlement was not fair and reasonable. His only say was that it is prejudicial to the interest of their members but that also has not been proved. On the contrary, the members of the complainant union have also received the benefits flowing from the said settlement.

14. In the light of the above and the evidence recorded in this instant case it appears clearly that the complainant union or the workmen represented by the complainant Union cannot be said to be workman concerned in the earlier two disputes viz., Ref. (ITC) Nos. 2/76 and 5/76 in as much as the said two references were in respect of individual demands and the workman on whose behalf the present dispute has been raised are in no way bound by the decision or the award given in the two references referred to above.

15. In my opinion, therefore, the members of the complainant Union cannot be said to be the concerned workmen in either of the above two references. As such no breach of S. 33 can be to have been committed by the Bank in the present case. Therefore, no complaint u/s. 33-A by the workmen is maintainable before this Tribunal. The complaint is, therefore, dismissed as not maintainable. No order as to costs.

Ahmedabad :

Dt. 11-10-1989.

G. S. BAROT, Presiding Officer
[No. L-12025/10/83-D.II(A)(I)]

का. आ. 3169.—ओर्डरिंग विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार में केशीय सरकार थी मुहम्मद यूसुफ प. टैक ब्रायं पूनरेट थैक ऑफ हिंडिया के द्विसाफ उपर अधिनियम की धारा 33-क के अधीन दायर की गई शिकायत के सम्बन्ध में अनुबंध में निर्दिष्ट ओर्डरिंग अधिनियम अधिनियम का पंचाट जैसे कि अनुबंध में है, प्रकाशित करनी है। यह पंचाट केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 3169.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Industrial Tribunal Ahmedabad as shown in the Annexure in respect of complaint under section 33 A of the I.D. Act, filed by Shri Mohmed Yonus A. Tank against the management of United Bank of India which was received by the Central Government.

ANNEXURE

BEFORE SHRI G. S. BAROT, PRESIDING OFFICER

INDUSTRIAL TRIBUNAL (CENTRAL)
AT AHMEDABAD

Complaint (ITC-PN) No. 1 of 1989

IN

Reference (ITC) No. 35 of 1984

Mohmedyunus A. Tank,
8, Gandhi Smrati Society,
Juhapura,
Ahmedabad-380055

..Complainant.

Vs.

United Bank of India,
Head Office, 16, Old Court House,
Street,
Calcutta-700001.

..Respondent.

In the matter of a Complaint under Sec. 33A of the Industrial Disputes Act, 1947.

APPEARANCES :

Shri Mohmedyunus A. Tank, the Complainant, in person.

Shri S. D. Phadke, Deputy Reg. Manager of the Respondent-Bank, stationed at Bombay.

AWARD

These proceedings have been initiated by one Mohmedyunus A. Tank (hereinafter referred to as "the workmen"). He has stated, in what is purported to be a complaint under Sec. 33A of the Industrial Disputes Act, 1947 ("the Act" to be brief), that he was in the service of the United Bank of India (hereinafter referred to as the Bank) and that he has been dismissed by the Bank by an order dated 9th May, 1987. According to him, this action has been taken by the Bank during the pendency of two industrial disputes between the Bank and its workmen before the Industrial Tribunal presided over by the undersigned. However, the Bank has not filed an approval application before the Industrial Tribunal for the said action of dismissal. In view of this, according to the workman, the Bank has committed a breach of the provisions of Sec. 33 of the Act and he has therefore filed the present complaint under Sec. 33A of the Act for appropriate relief.

2. The matter was fixed for preliminary hearing and the workman was asked to show as to how this could be treated as a complaint under Sec. 33A of the Act. In response, the workman filed a writing (Ex. 3) in support of his case. The Bank then filed its written statement (Ex. 5) and finally the matter was argued by the workman himself and by Shri S. D. Phadke, Dy. Regional Manager of the Bank, on behalf of the Bank.

3. Looking to the facts of the case, it has first to be decided as to whether this can be treated as a complaint under Sec. 33A. The relevant provisions can be found in Sections 33 and 33A. For the purposes of this case, the relevant sub-section of Sec. 33 is sub-section (2), which is as under :—

"(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman—"

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or,

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman;

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

* * * * *

For the purposes of this case, the important phase is "a workman concerned in such dispute". The sub-section will apply only if the workman is concerned in the pending dispute. The workman in the present case has cited two industrial disputes as pending before this Industrial Tribunal when the impugned action was taken. They are the disputes vide Ref. (ITC) No. 6 of 1984 and Ref. (ITC) No. 35 of 1984. It has been contended by the Bank that Ref. (ITC) No. 6 of 1984 was disposed of by this Tribunal on 29-11-1988 and the relevant award was published on 10-1-89 whereas the present proceedings were started on 20-2-89 and so that cannot be said to be a pending dispute. I do not agree with this contention of the Bank. The material date is the date on which the impugned action was taken by the Bank and not the date of starting these proceedings. The action of dismissal was taken on 9th May, 1987 on which date this reference was definitely pending. However, the workman has made no averments to show as to what was the nature of these pending disputes and how he was interested in the outcome of those disputes. Even then, let us see as to what were those disputes. The disputes referred for adjudication under these two references are as under:—

Ref. (ITC) No. 6 of 1984

"Whether the action of the management of United Bank of India, Regional Office, Western Region, Bombay in denying posting to Shri S. V. Mishra, sub-staff from its New Cloth Market branch, Ahmedabad to Ashram Road branch, Ahmedabad, is justified? If not, to what relief is the workman concerned entitled?"

Ref. (ITC) No. 35 of 1984

"Whether the action of the management of United Bank of India, Bombay in not absorbing Shri R. S. Makwana, Sub-staff in Bank's regular service is justified? If not, to what relief is the workman concerned entitled?"

It is now well settled that in order to be "a workman concerned in such dispute" there must be some common feature in the nature of the dispute between the two cases which would serve as a connecting link thereby rendering the workman in the latter case also a workman concerned in the dispute in the earlier case. A plain reading of the disputes in both the above reference show that there is no such connecting link. The dispute in Ref. (ITC) No. 6 of 1984 is regarding posting of one-Sub-staff from one branch to another whereas the dispute in Ref. (ITC) No. 35 of 1984 is pertaining to absorption in regular service of one Sub-staff. It appears from Annexure 10 (letter of his resignation) to the petition of the workman that he was already a confirmed godown clerk (and so there was no question even of his absorption in the regular service).

4. The workman has contended that the Bank has stated in their letter of dismissal that as industrial disputes are pending before the Industrial Tribunal, an application for approval of the action is being made, which meant that the Bank has already treated him as a concerned workman and so it is now not open to the Bank to make a contrary submission. I do not think so. If any statement is made by the Bank in the said letter of dismissal under any misconception of the provisions of law, it cannot debar the Bank from raising appropriate legal contentions before the Tribunal.

5. The workman has also relied on two decisions of the Hon'ble Supreme Court viz. (1) In New India Motors Private Ltd. v. K. Morris (1960 I L.L.J. 551 (555-56) (S.C.) and

(2) Digwadih Colliery v. Ramji Singh (1964) II L.L.J. 142 (144) (S.C.). I have gone through both these decisions and I do not think that these decisions would help him. On the contrary, the combined effect of both the above referred decisions is that there should be some common feature in the nature of the disputes in the two cases as stated above.

6. From the above discussion, it is very clear that the workman in the present case is not "a workman concerned" in the disputes in either of the above references. As such, no breach of Sec. 33 is committed by the Bank in the present case. Therefore, no complaint under Sec. 33A by the workman is maintainable before this Tribunal. The matter is disposed of accordingly. No order as to costs.

G. S. BAROT, Presiding Officer
Ahmedabad.

Dated 3rd October, 1989.

[No. L-12025/10/83-D.II(A)(II)]

N. K. VERMA, Desk Officer

नई दिल्ली, 28 नवम्बर, 1989

का. आ. 3170.—उत्प्रवास अधिनियम 1983, (1983 का 31) की धारा 5 द्वारा प्रदत्त उपकारी का प्रयोग करने हुए केन्द्रीय सरकार, अप मंत्रालय के अवार मन्त्री श्री शिंगारा सिंह को दिनांक 21-11-89 उत्प्रवासी मंत्री कार्यालय दिल्ली में उत्प्रवासी मंत्री, दिल्ली के सभी कार्यों को करने के लिए प्राधिकृत करनी है।

[म. ए-22012(1)/89-ई.प्र.]

प्रदीप सिंह, अवार मन्त्री

New Delhi, the 28th November, 1989

S.O. 3170.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri Shingara Singh, Under Secretary, Ministry of Labour, to perform all functions of Protector of Emigrants, Delhi in the office of the Protector of Emigrants, Delhi on 21-11-89.

[No. A-22012/1/89-Emig.]
PRADEEP SINGH, Under Secy.

नई दिल्ली, 28 नवम्बर, 1989

का. आ. 3171.—श्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वैस्तुत रूप से वस्त्र एवं वस्त्र विनियोगकारी के बीच, अनुबन्ध निर्दिष्ट श्रीयोगिक विवाद में केन्द्रीय सरकार श्रीयोगिक अधिकारण, न. 1, अस्थाइ के पंचपट को प्रकाशित करनी है, जो केन्द्रीय सरकार को 21 नवम्बर, 1989 की प्रामाण हुआ था।

New Delhi, the 28th November, 1989

S.O. 3171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of DRM, Western Railway, Bombay and their workmen, which was received by the Central Government on 21st, November, 1989.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I AT BOMBAY**

Reference No. CGIT-12 of 1985

PARTIES :

**Employers in relation to the management of Divisional
Railway Manager, Western Railway, Bombay.**

AND

Their workmen

APPEARANCES:

For the Management—Mr. P. R. Pai, Advocate

For the Workmen—Mr. S. J. Shah, Advocate and Mr. L. R. Burhade, Secretary.

INDUSTRY : Railways

STATE : Gujarat.

Bombay, dated the 22nd day of September, 1989.

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following disputes for adjudication to this Tribunal:

1. Whether the action of the management SS Surat, Western Railway, in removing Shri Micle Daniel, Ex-Substitute under Station Superintendent, Surat, from service with effect from 15th June, 1978 is legal and justified ? If not, to what relief the concerned workman is entitled to and from what date ?
 2. Whether the action of the Health Inspector, SS Surat, Western Railway in removing Smt. Manjoo-ben, ex-safaiwali under Health Inspector, SS Surat from service after she had put in 4 years of service from 1969 to 1972 is legal and justified ? If not to what relief the workman is entitled to and from what date ?
 3. Whether the action of the management of Western Railway in removing Shri Kanubhai Chunilal Solanki Ex-Safaiwala under SS Health Inspector ST who had worked for more than 2 years is legal and justified ? If not, to what relief the concerned workman is entitled to and from what date
 4. Whether the action of the management of Western Railway Administration in removing from service Sh. Chottu Kanji ex. Safaiwala, under HTXR Udhna, is legal and justified ? If not to what relief the concerned workman is entitled to and from what date ?
 5. Whether the action of the management of Western Railway in denying Shri Maijid D. Hammerman under Loco Foreman, Udhna, wages of Blacksmith for having worked as such from 1972 to 1978 and also not giving him promotion as Blacksmith is justified ? If not, to what relief the workman is entitled to and from what date ?
 6. Whether the action of the management of Western Railway in superseding and denying promotion to Shri Pashabhai M., Cleaner, under LF Udhna to the post of Augwala/Fireman Gr. 'B' is legal and justified ? If not, to what relief he is entitled to and from what date ?
 7. Whether the actions of the management of Western Railway in denying grant of annual increment and arrears thereof to Shri Babu M. 'B' Gr. Driver under LF Udhna for having worked as 'B' Grade driver from 1973 to 1978 and further in denying benefit of these increments in matter of his fixation of pay on promotion to the post of 'B' Grade Driver on regular basis, are justified ? If not, to what relief the concerned workmen is entitled to ?

8. Whether the action of the Management of Western Railway Administration in fixing the pay of Shri Jamnadas Maitibhai Gandhi, Station Master, Sachin at Rs. 500 instead of Rs. 530 in the grade of Rs. 425/650 on his promotion to that grade with effect from 1st March, 1978 is justified? If not, to what relief and from what date the concerned workman is entitled to?
 9. Whether the action of the management in denying wages of the post of Slinger in the pay scale of Rs. 210/290 to Shri Sahadea Babulal MW Khalasi under LF Udhna, for having worked as Slinger at Udhna, Locoshed from 1971 to 1980, is justified? If not, to what relief and from what date the concerned workman is entitled to?
 10. Whether the action of the management in denying to Shri Vishram Pitamber Fireman 'B' Gr. under IP, Udhna Token No. 2878 yearly increment of pay for the period from 1973 to 1976 is justified? If not, to what relief and from what date the concerned workman is entitled to?
 11. Whether the action of the management in denying overtime allowance to Shri Lotan T. Steam Crane Driver under LF Udhna for the period from 1969 to 1970 during which he worked on overtime for departmental and commercial public work is justified? If not, to what relief the workman is entitled to and from what date?
 12. Whether the action of the management of Western Railway Administration in denying payment of running allowance on the rate applicable to Driver 'C' Grade, to Shri Mirza Gulam A Fireman Instructor Udhna since 1972, as the grade of Fireman Instructor and Driver 'C' grade is same, is justified? If not, to what relief and from what date the concerned workman is entitled to?
 13. Whether the action of the management of Western Railway in recovering Rs. 1100 from the pay of Shri Abdul Rashid Augwala vide LF Udhna in 1976-77 as against the advance of only pay of Rs. 200 drawn by him in 1975 while he was deputed for Territorial Army Service is justified? If not, to what relief the concerned workman is entitled to?
 14. Whether the action of the management of Western Railway in not granting increment of pay as Shunter Grade 'B' for the period from 1970 to 1975 to Shri Narayan R. 'B' grade Udhna Locoshed after having put him on the work of Shunter since 1970, is justified? If not, to what relief the workman is entitled to and from what date?
 15. Whether the action of the management of Western Railway Administration in not granting yearly increments of pay to Shri Maganbhai D. Driver 'C' grade Driver for his officiating as 'C' grade from 1964 to 1968 and also not counting the said period in matter of fixation of pay on his promotion to that grade on regular basis is justified? If not, to what relief the said workman is entitled to and from what date?
 16. Whether the action of the Western Railway in not paying arrears of pay to Shri Jiva B. LF Udhna after refixation of his pay in 1977 as Fitter is justified? If not, to what relief the workmen is entitled to and from what date?
 17. Whether the action of the management of Western Railway in denying additional increment of pay to Shri Gustadji 'B' Grade Driver, Udhna and Shri I. G. Morval ESM under F&I (North) Bulsar, for remaining loyal to the Railway Administration during railway strike in 1974 as promised by the Western Railway is justified? If not, to what relief these workmen are entitled to?
 18. Whether the action of the management of Western Railway in taking 12 hours duty work from Gate-men in Navapur BCT Division working under PWI

Navapur Division against 8 hours fixed duty and also not paying them extra wages for extra duty hours beyond 8 hours is justified? If not, to what relief the workman is entitled to and from what date?

19. Whether the action of the management of Western Railway in granting promotion to Shri Dinesh B. Augwala under LF Udhna as Augwala from the year 1977 instead of the year 1970 when he was put on the work of Augwala since he had passed the qualifying Augwala test and also got training as Augwala in 1970 was justified? If not, to what relief the workman is entitled to and from what date?
20. Whether the action of the management of Western Railway in reverting Shri Gulam Nabi ex-Driver and Shunter of Udhna to the post of Shunter for 2 years affecting his future seniority is justified? If not, to what relief the workman is entitled to and from what date?
21. Whether the action of the management of Western Railway in denying payment of arrears on account of difference of wages of the post of Khalasi & Painter to Shri Vish P. Khalasi under LF Udhna for his working as Painter for 5 years since 1975 is justified? If not, to what relief the workman is entitled to and from what date?
22. Whether the action of the management of Western Railway in bringing down the position of S/Shri Jiwanhai I., Subhabhai N. and Thakerbhai S. Firemen II in the seniority list of Augwala's Bombay, after their serving for 8 years as Fireman 'B' Grade is justified? If not, to what relief these workmen are entitled to and from what date?
23. Whether the action of the management of Western Railway in removing Shri Ramesh Sena Ex-Khalasi under TXRT, Surat from service is legal and justified? If not, to what relief the concerned workman is entitled to and from what date?
24. Whether the action of the PWI Novapur Western Railway in removing from service Shri Nimji Bhuria, ex-Gate Keeper Gate No. 64 at Novapur and asking him orally to work as Gang-man at Gate No. 6 is justified? If not, to what relief the workman is entitled to and from what date?
25. Whether the action of LF Udhna Western Railway in denying out of turn allotment of railway quarters to the following employees of Udhna who are T.A. Sainiks in violation of the policy of Railway Administration to provide railway quarters to the person who join Territorial Army on priority basis is justified? If not, to what relief the following workmen are entitled to and from what date?
 1. Shri Thakor M. Cleaner under LF Udhna SPR 12207466.
 2. Shri Shiyamgopal S. Khalasi under LF Udhna SPR 122229064.
 3. Shri Shivitarak S. Khalasi under LF Udhna SPR 1228993.
 4. Shri Pandurang Tukaram Augwala LF Udhna IAK 12207407.
 5. Shri Subbaia M. Augwala, LF Udhna SPR 22207367.
 6. Shri Ranchhod D. Khalasi LF Udhna SPR 1231460.
 7. Shri Barku Vedu Chavan, Cleaner LF Udhna SPR 12207550.
 8. Shri Ramsurat S. Fitter, LF Udhna SPR 1231458.
 9. Shri Yuvaraj T. Cleaner under LF Udhna SPR 12201457.
 10. Shri Sitaram, Cleaner under LF Udhna

26. Whether the action of the Western Railway, Bombay in not condoning the break-in-service and restoring original seniority and also denying benefits in promotion to Shri Govindbhai L. TXR Udhna is justified? If not, to what relief the workman is entitled to and from what date?"

2. In this reference 26 unconnected different industrial disputes in respect of different persons and clubbed together perhaps because the disputes were raised by the Paschim Railway Karamchari Parishad (PRKP), Udhna and the employer is common.

3. Out of the employees concerned with these disputes the workmen concerned with the disputes mentioned at item numbers 1, 5 to 12, 13 to 17, 18 to 21, 24 and 26 remained absent and the Secretary of the Union submitted in writing on 23rd March, 1987, that these workmen did not appear to be interested in prosecuting further their claims and hence their cases may be disposed off. The workmen concerned with the disputes mentioned at item numbers, 2, 3, 4, 11, 12, 22 and 23 have filed their separate statements of claim. So also one of the two workmen viz. I. G. Morval concerned with the dispute mentioned at item number 17, both the workmen concerned with the dispute mentioned at item number 22 and two of the 10 workmen (Shri Ranchhod D. Khalasi and Shri Sitaram) concerned with the dispute mentioned at serial number 25 also filed their separate statements of claim. However, at the hearing of the reference the Secretary of the PRKP submitted in writing that on inspection of reference it was found that some of the employees mentioned at item number 25 of the schedule have been allotted with quarters and some of the remaining are not interested in the dispute and hence dispute at item number 25 may be treated as finalised. By another statement submitted on 14th July, 1987, the Secretary of the PRKP stated that the workmen Shri Chhotu Kanji concerned with the industrial disputes at item number 4 has been ordered to be reinstated with back wages by the Central Administrative Tribunal (CAT) at Ahmedabad and hence the matter may be treated as closed. On 20th February, 1981, the Secretary of the Union submitted in writing that the workman Shri Thakerbhai S. one of the workmen concerned with the dispute mentioned at item number 22 is not interested in pursuing his case and hence the same may be withdrawn.

4. Smt. Manjooben Karsan claimed that she was appointed as Safaiwali at Udhna on 21st March, 1968, on pay of Rs. 150 per month in a permanent post but she was not given any appointment letter, attendance card, identity card, service Card, to deprive her of her claim for permanent status but was given artificial breaks till 1972, and was removed from service without disclosing the reasons for the removal and inspite of the fact that she got herself operated for family planning as directed and also was medically examined by the medical officer at Udhna in the year 1972 for confirmation. The Railway Administration, did not dispute these facts but contended that Smt. Manjooben Karsan was interviewed by Committee of Officers for regular post of Safaiwali but she was not selected for the same and hence she was not considered for the appointment in Railway. It is however an admitted position that Smt. Manjooben Karsan had worked as Safaiwali continuously from 2nd March, 1968 till 1972, with only artificial breaks and inspite of this position her services were terminated without following the procedure prescribed in section 25-F of the Industrial Disputes Act, 1947. In view of her continuous service for nearly four years, she must be deemed to have attained the status of a permanent employee. As claimed by her she had also undergone family planning operation as directed by the management. The termination of her service therefore was clearly bad and she must be reinstated in service with back wages.

5. Shri Kanubhai Chunilal Solanki claimed that he was not given any appointment letter, service card, identity card or attendance card or pay slip to deprive him of the evidence of regular status in the Railway Service and was given forced and artificial breaks till 11th December, 1972, when he was medically examined and was deputed to work as Safaiwali on a permanent post. He further averred in his statement of claim that the work was supervised by the Health Inspector at Surat. According to him, he worked up to 27th December, 1974, during which he was given forced and artificial breaks. He was not informed of his seniority and ultimately on

22nd December, 1974, he was removed from service without assigning any reasons therefor. According to the management, Shri Kanubhai Chunilal Solanki was a dismissed employee of the Gujarat State Transport Corporation, Undertaking and that he had secured employment with the Railways by suppressing this information and hence his services were terminated when this fact was revealed in the vigilance enquiry. At the trial, Shri Kanubhai C. Solanki admitted that he was dismissed from service by the Gujarat State Transport Corporation that he had not disclosed these facts to the Railway Authorities and the Railway Administration came to know of this fact in a vigilance enquiry conducted by the Western Railway. He tried to say that he was not dismissed from service by Gujarat State Transport Corporation for misconduct but he admitted that he was charge-sheeted for misconduct. He also admitted that his services were terminated on the basis of the report of the vigilance department. His services therefore were rightly and properly terminated and his claim for reinstatement is neither legal nor proper.

6. Shri Lotan Tulsidas claimed over-time wages for the period from 25th May, 1969 to 5th March, 1983, during which he was working as Steam Crane Driver at Udhna Locoshed. According to him, the Railway Administration did not record his over-time work for the purpose of payment of over-time allowance but this over-time work was regularly recorded for preparing the statement of machinery and plant utilisation. The management opposed the claim on the ground that Shri Lotan Tulsidas did not apply for over-time during the year 1969-70. In the written statement, the management did not specifically contend that Shri Lotan Tulsidas did not work over-time as alleged by him. The workman by an application dated 25th April, 1986, called upon the Railway Administration to produce the registers of machinery and plant utilisation and of break-down of Steam Cranes for the years 1969 till 1985. But the management did not produce those documents on the specious plea that they were not available. The workman, therefore, produced his official register showing the details of over-time work and copie of the statements of over-time work, prepared by him in respect of over-time work done by him during the aforesaid period. Admittedly, copies of these statements were handed over by him on 22nd November, 1982, to Shri T. I. Puri, who was then working as Head Clerk at Udhna Locoshed. The Railway administration did not choose to examine the Head Clerk or any other concerned officer of Udhna Locoshed, to state that the statements are not correct nor did the Railway Administration produce any record to show that no over-time work was done by Shri Lotan Tulsidas during the period from 25th May, 1969 to 5th March, 1983. Moreover, from the facts brought on record in the cross examination of the workman it is fully established that the register produced by him is an authentic document maintained in due course of his duty and bears the signatures and stamps of the Station Masters of various railway stations where Shri Lotan Tulsidas was deputed to work during the period from 28th September, 1971 to 1st August, 1981 and contains entries regarding the over-time work done by Shri Lotan Tulsidas on various dates. This is what the workman stated in his cross-examination :

"A Over-time register was maintained at Udhna Locoshed. The Loco Foreman has destroyed it. The over-time registers are destroyed after every five years. Entries were made in the relevant over-time registers about the over-time work done by me. I do not know when the registers were destroyed. Entries about the over-time work done by me at various stations were made by the respective Station Masters in my register and entries were taken every month in the over-time Register at the Locoshed on the basis of the entries in my register, which I have produced. The entries were made and signed by the respective Station Masters in my presence. As I do not know English I cannot tell the names of the persons who have signed. The Register was given to me by the Loco-Foreman for getting the entries made from the respective station masters. Such Register is given to every crane driver. I was in possession of this register because it was expected to remain with me. This register is expected to be kept in the box in the tool van of the crane. I have produced all the registers from 1969 to 1983. In the Register commenced on 19th January, 1971 the last

entry is made by the Madhi Station Master on 1st August, 1981. This is the only register which I have produced. The statement produced by me was prepared by me on the basis of the entries in my private diaries. Over-time wages are expected to be paid in the following month. But I was never paid any overtime."

It is thus clear that the workman had worked over-time during the aforesaid period. But the statements filed by him are for the period from 2nd January, 1971 to 28th March, 1981, while the diary is for the period from 28th September, 1971 to 1st August, 1981. He will therefore, be entitled to get over-time wages for the period from 2nd January, 1971 to 1st August, 1981, and the amount due to him shall be calculated on the basis of the entries mentioned in these two documents.

8. Shri Mirza Gulam was working as Fireman Grade 'B' on Passenger Train before he was promoted as Fireman Instructor on 22nd December, 1972. According to him as a Fireman Grade 'B' he used to make 4500 kms. per month for the purpose of computation of running allowance. But after he was promoted as Fireman Instructor, the Divisional Railway Manager started paying average running allowance on the basis of 3200 kms. only. It is also his case that he was entitled to get running allowance at the rate which is admissible to Driver Grade 'C' i.e. at the rate of Rs. 14.65 per 100 kms. but he was paid at the rate of Rs. 10.30 per 100 kms., admissible to Fireman Grade 'B'. He therefore prayed that he should be paid running allowance for average of 4500 kms. per month at the rate of Rs. 14.65 per 100 kms. According to the management Shri Mirza Gulam was entitled to average running mileage allowance earned from January 1971 to December, 1972 and that the arrears from January 1976 to June 1977 amounting to Rs. 196.75 and Rs. 803.20 as difference of kilo-mitreage arrears due on account of revised rates from May, 1976 to April, 1978 have been paid to the workman. The workman asserted in his affidavit of evidence that his average kilometrage for the purpose of running allowance was 4500 kms. per month during the period of 12 months preceding the date of his promotion as Fireman Instructor from the post of Fireman Gr. 'B'. He has also asserted that he was paid at this rate during the period from 1st January, 1976 to 1st May, 1976. He has stated so in his statement of claim also. The management did not deny that he was paid running allowance on the basis of 4500 kms. per month during the period from 1st January, 1976 to 1st May, 1976. The management has neither produced any record on the basis of which his average was fixed at 3200 kms. per month. No explanation was also offered as to why he was paid at the rate of 4500 kms. per month and on what basis this rate was reduced. The workman has also produced along-with the statement of Claim a letter dated 12th January, 1984, of the Divisional Railway Manager (Establishment), Bhavnagar Division which shows that the post of Fireman Instructor is equivalent to the post of Driver Grade 'C' and the Fireman Instructor is entitled to get the running allowance at the same rate as Driver Grade 'C' i.e. at Rs. 14.65 per 100 kms. Obviously there cannot be different rates in different Divisions of the same Railway for the same work. The workman, Shri Mirza Gulam therefore is entitled to get running allowance on the basis of 4500 kms. average per month and at the rate at which running allowance was paid to Grade C Driver as revised from time to time.

9. Shri I. G. Morval claimed the advance increment payable to loyal workmen/employees for not taking part in the railway strike commenced on 8th May, 1974. Admittedly, however, he was absent from work on 8th May, 1974, and on 9th May, 1974. The story told by him as how he could not work on those twodays being tossed from one station to another cannot be accepted and the obvious inference is that he participated in the strike atleast during those two days. It is also an admitted position that the advance increment was subsequently withdrawn. The claim of Shri I. G. Morval therefore is absolutely frivolous and deserves to be rejected.

10. Shri Sakhabai Manubhai Patel has challenged the action of the Railway Administration in putting him down in the seniority list of Fireman-II in Udhna/Nandurbar Division of Western Railway. Shri Sakhabai who was working in

Bulsar Bilmora Division of the Western Railway was promoted as Fireman Grade-II on 1st June, 1973. On 6th September, 1975, he was temporarily transferred for two months to Udhna. But due to reduction in the category of Fireman Grade 'B' at Bulsar, he was continued at Udhna. Initially he was correctly placed in the seniority list of the Udhna Nandurbar Division on the basis of his appointment as Fireman Grade 'II' in the Bulsar Division. But subsequently, his seniority was fixed on the basis of his date of appointment as Cleaner at Bulsar and was fixed in between cleaners of Udhna-Nandurbar Division appointed between November 1968 and April 1969 and promoted as Fireman in Grade 'II' in November, 1977. This was obviously wrong because Shri Sakhabhai was not transferred from Bulsar to Udhna at his request. His seniority therefore should have been fixed on the basis of the date of his promotion as Fireman Grade 'II' which as mentioned above was 1st June, 1973. His date of appointment as Cleaner was absolutely irrelevant for the purpose of fixing his seniority in the category of Fireman Grade 'II'. The workman, therefore, is entitled to the restoration of his seniority in Udhna Division to which he was transferred, on the basis of his promotion as Fireman Grade 'II'. He will also be entitled to the promotion as Fireman Grade-I from the date on which his junior in the original seniority list was promoted to that post, and consequently difference in salary of Fireman Grade-I and Fireman Grade-II from that date. He, however, will not be entitled to get promotion as diesel assistant which contemplated some training.

11. Shri Ramesh Sena who was removed from service for misconduct, challenged the action on the ground that it was taken without holding a proper enquiry. According to him, the enquiry was held in English, a language which he did not understand and that principles of natural justice were not followed by the enquiry officer. There is no substance in these contentions. The workman was served with two charge-sheets for unauthorised absence without leave, but the order of dismissal was common. He was duly furnished with copies of the enquiry proceedings and while acknowledging the same he had stated that the statements were recorded in his presence and that full opportunity was extended to him during the proceedings in the enquiry. It also appears that against the order of removal he had preferred an appeal and after it was rejected a review petition to the management. There is therefore no substance in the contention that the workman was removed from service without holding a proper enquiry. There is also no scope for reducing the punishment because he was not dismissed from service but only removed. Moreover, his was a case of chronic absentism.

12. In the result, I pass the following award :

1. The first party, Western Railway is directed to reinstate Smt. Manjooben Karsan in Railway Service with full back wages from 1st January, 1973, till actual reinstatement.
2. The first party Western Railway is directed to pay over-time allowance to Shri Lotan Tulsidas for the over-time work done by him from 2nd January, 1971 to 1st August, 1981. The calculations of the wages shall be made on the basis of the statements furnished by him to the Head Clerk, of Udhna Loco-shed on 22nd November, 1982, and the entries in the register produced by him in this reference.
3. The first party, Western Railway is directed to pay difference in running allowance payable on the basis of average of 4500 kms. per month at the rate at which the running allowance was paid to Grade 'C' Driver as revised from time to time and the amount paid to him till his promotion as Driver Grade 'C'.
4. The first party, Western Railway is directed to restore the seniority of Shri Sakhabhai N. Patel on the basis of his appointment as Fireman Grade-II in Bulsar Division, and to give him promotion as Fireman in Grade 'I' from the date on which his junior in the original seniority list was promoted to that post and pay him difference of salary of Fireman Grade 'I' and Fireman Grade 'II' from that date.

5. The remaining workmen are not entitled to any relief.

M. S. JAMDAR, Presiding Officer
[No. L-41011/2/81-D.II(B)(Pt.)]
HARI SINGH, Desk Officer

New Delhi, 29 November, 1989

का.ग्रा. 3172.—ओरोगिक विवाद भवित्वियम्, 1947 (1947 का 14) की घारा 17 में अनुसंधान में केन्द्रीय सरकार, मैसेस सी. पी. डी. आई. लिमिटेड की रिजिनल इन्स्टीट्यूट. के प्रबंधताव के बिषय श्री के. के. मुखर्जी (जीफ ड्राफ्ट मैन) द्वारा जन्म भवित्वियम् की घारा 33 के प्रवीन दायर की गई शिकायत के संबंध में अनुदंष्ट म दर्शा ए. गण केन्द्रीय सरकार ओरोगिक भवित्विय (सं1) अन्वाद के पंचाट को प्रकाशित करती है।

New Delhi, the 29th November, 1989

S.O. 3172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the annexure in respect of complaint u/s 33A of the said Act filed by K. K. Mukherjee, Chief Draftsman (S&C) against the management of Regional Institute No. 3, C.M.P.D.I. Ltd.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a Complaint U/S. 33A of the I.D. Act.
Complaint No. 2 of 1988

PARTIES :

K. K. Mukherjee, Chief Draftsman (S&C)
Regional Institute No. 3, C.M.P.D.I. Ltd.,
Darbhanga House, Ranchi. .Complainant.

Versus

1. Employers in relation to the Management of Central Mine Planning and Design Institute Ltd., Gondwana Place, Kanke Road, Ranchi.
2. Shri R. G. Mahendru, Chairman/Managing Director, C.M.P.D.I. Ltd., Gondwana Place, Ranchi.
3. Shri N. R. Mitra, Director (Technical), C.M.P.D.I. Ltd., Gondwana Place, Ranchi.
4. Dr. R. N. Singh, Regional Director (H.O.), C.M.P.D.I. Ltd., Gondwana Place, Ranchi.

Opposite Parties.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Complainant—None.

For the Opp. Parties—Shri S. S. Lahiri, Dy. Chief Personnel Manager, C.M.P.D.I. (HQ).

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 17th October, 1989

AWARD

The applicant K. K. Mukherjee, Chief Draftsman (S&C), Regional Institute No. 3, Central-Mine Planning and Design Institute Ltd., Darbhanga House, Ranchi, submitted the present Complainant under Section 33A of the Industrial Disputes Act before Central Government Industrial Tribunal No. 3, Dhanbad on 13-6-83 impleading (1) Employers in relation to the management of Central Mine Planning and Design Institute Ltd., Gondwana Place, Kanke Road, Ranchi. (2) Shri R. G. Mahendru, Chairman/Managing Director,

C.M.P.D.I. Ltd., Gondwana Place, Ranchi, (3) Shri N. R. Mitra, Director (Technical), C.M.P.D.I. Ltd., Gondwana Place, Ranchi and (4) Dr. R. N. Singh, Regional Director (H.Q.), C.M.P.D.I. Ltd., Gondwana Place, Ranchi as Opp. Parties. Later by Order of the Ministry No. Z-20025/34/88-II-CLS (iii) dated 20-8-88 the Complaint was transferred to this Tribunal for disposal.

2. The case of the Complainant in the petition of complainant, is that during the pendency of Reference No. 88 of 1982 before Central Government Industrial Tribunal No. 3, Dhanbad, the Opp. Parties, in contravention of provisions of Section 33(1) of the Industrial Disputes Act, 1947, arbitrarily and without any authority and jurisdiction issued Office Order bearing No. CMPDI: HQ: OE: 326:1235A dated 31-3-1983 promoting S/Shri G. Romould and D. N. Banerjee, both Chief Draftsmen (S&C) to the post of Drawing Officer in the scale of Rs. 800-50-1400 (E-2 Grade) in deliberate contravention of and altering to the prejudice and detriment of the Complainant the conditions of service applicable to him immediately before, the commencement of such proceedings. The said order of promotion was issued in violation of the conditions of service of the Complainant who as spelt out the manner of such the violation. The Complainant has prayed that an order be passed directing to promote him to the post of Executive Draftsman (old Designation Drawing Officer) with effect from 1-7-1977 with all consequential monetary benefits.

3. In opposition to the claim of the Complainant the Opp. Party has stated that the present Complaint is not maintainable and that he was not a workman concerned in the main Reference No. 88/82. It has been emphatically denied by the Opp. Parties that the allegations of change of conditions of service is mis-conceived and that they have not contravened the conditions of service of the Complainant.

4. During the pendency of the present Complaint case the Complainant submitted a petition before this Tribunal on 21-9-89 stating that he is nearing the age of superannuation obtaining for the Executives upon attaining the age of 58 years and that while presently holding non-executive post he is to reach the age of superannuation upon attaining the age of 60 years and in the circumstances he has decided to withdraw the Complaint to enable him to continue in service upto 60 years of age. The petition has remained un-opposed by the Opp. Parties.

5. Accordingly, the following award is rendered—

The Complainant is permitted to withdraw the Complaint and hence the Complaint case is disposed of on withdrawal by the Complainant.

S. K. MITRA, Presiding Officer
[No. L-20025(7)/89-IR(Coal-I)]

का. भा. 3173.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, भेदभाव सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड की मोहेश्पुर कालियरी के प्रबन्धतंत्र से ममता नियोजकों और उनके कर्मकारों के बीच, प्रतुषध में निर्दिष्ट ओद्योगिक विवाद के भेदभाव सरकार ओद्योगिक अधिकरण (सं. 1) धनबाद के पंचाट को प्रकाशित करती है।

S.O. 3173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Maheshpur Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 42 of 1988

PARTIES :

Employers in relation to the management of Maheshpur Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen Shri Lalit Burmen, Vice-President, United Coal Workers' Union.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 31st October, 1989

AWARD

By Order No. L-20012/167/87-D-III, dated, the 18th March, 1988, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal for adjudication.

“Whether the action of the management of Maheshpur Colliery of Govindpur Area No. III of M/s. B.C.C.L. P.O. Sonardih, Dist. Dhanbad in terminating the service of Sri Pancham Passi, Miner/Loader with effect from 28-4-86 is justified ? If not, to what relief the workman is entitled ?”

2. The case of the management of Maheshpur Colliery of M/s. R.C.C. Ltd. as disclosed in its written statement, details apart, is as follows :

The present industrial dispute is not legally maintainable. The concerned workman is named Sadhu Passi and not Pancham Passi. He was a workman of Bararee Colliery under Bhowra Area. He was removed from his service by the management of Bararee Colliery. However, he was allowed to join his duty on 30-1-84; He worked there from 30-1-84 to 3-2-84 and then started absconding. It was discovered in 1986 that the concerned workman was working in the name of Pancham Passi at Maheshpur colliery. It appears that Pancham Passi was dead or had abandoned his service and the concerned workman Sadhu Passi surreptitiously entered into the service of the management impersonating himself as Pancham Passi. He confessed that his identity as Sadhu Passi and that he was impersonating Pancham Passi sometime after he was removed from his service at Bararee Colliery after raising an industrial dispute

with the management. After ascertaining from the concerned workman that he was impersonating Pancham Passi, he was not permitted to continue further as impersonator and necessary orders were accordingly passed. However, the concerned workman subsequently took the plea that the management changed his name from Sadhu Passi to Pancham Passi during the period of private management. Had it been so, he would have raised an industrial dispute for correction of his name stating therein relevant facts. The management has submitted that its action in stopping Sadhu Passi the concerned workman from continuing impersonation of Pancham Passi with effect from 28-4-86 is justified.

3. The case of the sponsoring union, as disclosed in its written statement submitted on behalf of the concerned workman, is as follows,

The concerned workman was appointed in early 1971 in Maheshpur Colliery which was under the management of M/s. Bharat Collieries Ltd., a private sector company. The colliery was taken over by the Government of India on 17-10-71 and was later nationalised on and from 1-5-72. During the short period of service under the erstwhile private owner, the name of the concerned workman was changed on record as was the practice of the private sector management in order to deprive the workmen from the benefits of the permanent workmen. On the date of take over of the colliery it was found that his name in the colliery record was mentioned as Pancham Passi while his father's name was correctly maintained as Ramkishun Passi. The workman made a representation to the Custodian who said that he would not change the name and would maintain the same name as in the records handed over by the erstwhile management the colliery. He continued to work in the name of Pancham Passi and was issued identity card which contained other particulars. The above facts were known to all the officials of the colliery who were incharge at the relevant time. After a lapse of 15 years the management terminated the services of the concerned workman summarily by letter dated 22/28-4-86. The concerned workman made a representation dated 19-5-86 to the Superintendent, Maheshpur Colliery challenging the order of termination of service without giving him any opportunity to explain his case and demanded that the order be withdrawn. But the management refused to consider the matter and the union was constrained to raise an industrial dispute before the A.L.C.(C), Dhanbad which culminated in the present reference. It is alleged that the action of the management is wrong and unjustified and tantamounts to gross violation of the provisions of the Standing Orders and principles of natural justice. The concerned workman is neither an impostor nor has he got employment by fraudulent means but was a victim of the malpractice indulged in by the management of the erstwhile private employer. In the circumstances, the union has prayed that the Tribunal be pleased to hold that the action of the management in terminating the services of the concerned workmen is illegal and unjustified.

4. In rejoinder to the written statement of the sponsoring union the management has stated that it

is incorrect to state that the concerned workman was appointed at Maheshpur colliery in 1971. The management has stated that it is absurd to suggest that the name of the concerned workman was changed to Pancham Passi by the private management or that the concerned workman approached the Custodian for correction of his name. As a matter of fact he surreptitiously started working at Mohehpur colliery impersonating Pancham Passi who abandoned his services or died. He was a workman of Bararee colliery falling within Bhowra Area and learned that he was reinstated in service by an award of Industrial Tribunal. He did not inform the General Manager of Bhowra Area or the General Manager of Govindpur Area that he was working in Maheshpur colliery of Govindpur Area in the name of Pancham Passi and that he would not join his duty at Bhowra. Once it was established that he was not Pancham Passi and was impersonating himself as Pancham Passi, there is no scope for him to continue in employment in false name and the management cannot become a party to impersonation or falsification of records.

5. In rejoinder to the written statement of the management the sponsoring union has asserted that the name of the concerned workman is Sadhu Passi and that he is also called by the name of 'Pancham'. He earlier worked in Brarree colliery of M/s. East India Coal Co. Ltd. before the take over and nationalisation of the Coal Mines. He was dismissed from service from 10-6-65 by the erstwhile management of Bararee colliery. Consequent upon an industrial dispute having been raised the Central Govt. Industrial Tribunal No. 2, Dhanbad, adjudicated upon the dispute and passed an award dated 21-1-1971 directing the management to reinstate him in service with back wages. But the then management did not, however, implement the award and filed a Writ Petition before the High Court of Judicature Patna. During that period the workman got an employment in Maheshpur colliery where on the date of take over of the colliery his name on the roll of Maheshpur Colliery was borne as Pancham Passi. It is not a fact that he was allowed to join at Bararee colliery and that he worked there from 30-1-84 to 3-2-84, 13 years after the award was passed. As a matter of fact the management of M/s. B.C.C. Ltd. refused to implement the award passed against the erstwhile management. The union had specifically denied that the concerned workman was impersonating any dead or living Pancham Passi.

6. In support of its action the management has examined one witness, namely, MW-1 P. N. Choudhary posted to Maheshpur colliery of M/s. B.C.C. Ltd. from 7-2-83 to 9-6-88 both as Senior Personal Officer and later by Personnel Manager and laid in evidence a number of documents which have been marked Exts. M-1 to M-4. On the other hand, the sponsoring union has examined the concerned workman and laid in evidence some documents which have been marked as Exts. W-1 to W-3.

7. Admittedly, Sadhu Passi Slo Ramkishun Pashi, Vill. Palli, P.O. Bisunnai, P.S. Baral, Dist. Unnao,

was employed as Miner/Loader in Bararee colliery. During the time when the coal industry was under private management he was dismissed from service from 1-6-65. At the instance of Sadhu Passi an industrial dispute was raised and the Central Govt. Industrial Tribunal No. 2, Dhanbad, was pleased to pass an award dated 21-1-1971 in his favour and directed the management to reinstate him in service with back wages. The award, however, was not implemented and the Writ Petition was filed before the High Court of Judicature at Patna.

8. While implementation of the award remained a pending issue Sadhu Passi entered into the service of Maheshpur colliery on 27-6-71 as appears from the identity card issued by the said colliery (Ext. W-3). Admittedly, both Bararee colliery and Maheshpur colliery are coking coal mines and the management of both the collieries were taken over by the Central Government with effect from 17-10-1971 and both the collieries were nationalised with effect from 1-5-72.

9. It is the case of the management that since Pancham Passi was dead or had abandoned his service, the concerned workman Sadhu Passi surreptitiously entered into the services of the management impersonating himself as Pancham Passi. The case of the sponsoring union on the other hand is that the erstwhile private management changed his name to Pancham Passi in order to deprive him of benefits of a permanent employee and that when the management of Maheshpur colliery was taken over by the Central Government, he approached the Custodian to change his name to Sadhu Passi which was, however, refused by the letter and the earlier record was allowed to stay.

Personation is an assumption of the name and character of another person; to 'personate' means to pretend to be a particular person. The offence of false personation is dealt with in Sections 140, 170, 171, 171-D, 250 and 416 of I.P.C. Section 140 deals with personation of a soldier, sailor or airman in the Military, Naval or Air service of the Government of India. Section 170 and 171 deal with personation of public servant and Section 171-D deals with personation at election. Section 205 deals with personation for purpose of act or proceeding in suit or prosecution and Section 416 deals with cheating by personation and here the offence of cheating may be committed whether the individual personated is real or imaginary person.

But in the instant industrial dispute the case of the management is that Pancham Passi of Maheshpur colliery was dead or had abandoned his service and the concerned workman Sadhu Passi is sneaked into the service of the management in that colliery by impersonating himself as Pancham Passi. Unfortunately there is no vestige of evidence on record to indicate that Pancham Passi was a workman of Maheshpur colliery who was dead or abandoned his service. On the other hand, the other particulars excepting the name of 'Pancham' of Maheshpur colliery and 'Sadhu' of Bararee colliery are the same. That being the position it cannot be held or concluded that Sadhu Passi was impersonating Pancham Passi who was dead or had abandoned his service.

Sri B. Joshi, learned Advocate for the management has contended that since Sadhu Passi was impersonating as Pancham Passi, the services of the concerned were dispensed with and in doing so, the management is not required to go through the tardy process of domestic proceeding as his appointment itself was irregular. In support of his contention Sri Joshi has taken me through an award dated 31-10-87 passed by the learned Presiding Officer Central Govt. Industrial Tribunal No. 2, Dhanbad, in Reference No. 79 of 1985. Upon perusal of the award it appears that in that case one Upendra Jana was real workman and Raghu Jana was impersonating Upendra Jana and in that view of the matter the learned Tribunal in the context of decision reported in Lab. I.C. (1983) P. 1884 has held that no one has a right to be appointed irregularly and his position is that of a person who has no right to the post and in such a case their Lordships held that there is nothing unfair in stopping of such a person from work without hearing the person likely to be affected. But in the present case there is no existence of Pancham Passi apart from individuality and personality of Sadhu Passi and so, the facts of the case as surfaced in that award are not similar with those in the present case.

10. Admittedly, Sadhu Passi was dismissed from service with effect from 10-6-65 while he was working under the management of Bararee colliery and that upon an industrial dispute, the Tribunal was pleased to pass an award dated 21-1-1971 directing the management to reinstate him in service with back wages. It is also an admitted position that the award was not implemented and the management preferred Writ petition before the Hon'ble Patna High Court. Thus, it is seen that while Sadhu Passi was without any employment he got into the services of Maheshpur colliery. This is also supported by evidence of Sadhu Passi as well. It is the case of the sponsoring union that erstwhile private owner changed his name to Pancham Passi in order to deprive him the benefits of a permanent employee.

Sri B. Joshi has submitted that the contention of the sponsoring union in this respect is pointless and baseless. But Sri Lalit Burman, authorised representative of the sponsoring union, has placed before me a small book entitle Coal Industry in India written by S. Mohan Kumaramangalam. Kumaramangalam has written as follows : (Page 58) :

"The practice of employing labour as 'Badli' workers was widespread. As under law, any worker who is continuously engaged for a period of 240 days will be entitled to privileges like provident fund etc., the owners 'changed' the workers often or recorded different names to avoid the law. In a number of collieries "duplicate" attendance registers and false wage sheets were maintained."

Sri Kumaramangalam has given some names of the collieries where such malpractices were resorted to. As is well known he was a knowledgeable person with regard to coal industry as it was under the private management. So the comment of Kumaramangalam regarding malpractice of the

change of names of workers by erstwhile owners cannot be brust aside.

In conformity with the case of the sponsoring union Sadhu Passi has stated that he approached the erstwhile Custodian for correction of his name in the record of the management as Sadhu Passi, but the Custodian declared that his name as Sadhu Passi would continue in the record. It appears that the management of Bararee colliery issued a letter dated 23-1-84 to Sadhu Passi directing him to join services in Bararee colliery immediately (Ext. M-3). Thereafter the anomaly was detected by the management of Bhowra Area (which comprises of cluster of collieries including Bararee colliery) as revealed from the letter of Personnel Manager, Bhowra Area dated 15/17-3-86 (Ext. M-1) and 16-4-86 (M-2). The concerned workman has explained the matter by stating that he went to Bararee colliery, met the Personnel Officer whereupon the Personnel Officer demanded his identity card and he disclosed that he was working in Maheshpur colliery.

The management has asserted that Sadhu Passi joined Bararee colliery on 30-1-84 and worked there for 5 days till 3-2-84 and thereafter absconded. This has been totally denied by the sponsoring union. The concerned workman has not been asked anything in cross-examination in regard to his joining Bararee colliery. The witness for the management has not vouched for the fact that Sadhu Passi joined Bararee colliery on 30-1-84 and worked there till 3-2-84. The management has not produced any document in support of this fact. This being the position, I come to the conclusion that Sadhu Passi did not join Bararee colliery as alleged by the management.

11. It appears that by letter dated 22/28-4-84 of the Superintendent, Maheshpur colliery, Pancham Passi was intimated that since he got employment by fraudulent means in the name of Pancham Passi while his real name is Sadhu Passi and was employed at Bararee colliery, he ceased to be in employment of Maheshpur colliery with immediate effect as he was imposter (?) (Ext. W-1). According to Oxford Dictionary of current reprint in India 1968 'impostor' means one who assumes a false character or passes himself off for some one else; swindler. According to Webster's New World Dictionary of the American Language 'impostor' means a person who deceives or cheats others, specially by pretending to be someone or something that he is not. Sadhu Passi has not deceived or cheated the management by passing himself off as Pancham Passi. Even if it is assumed that he passed himself off as Pancham Passi, he can hardly be labeled as impostor. It appears that immediately upon termination of his service he wrote to the management of Maheshpur colliery for re-consideration of his case since the management of Maheshpur colliery changed his name on record in order to deprive him of various benefits. (Ext. W-2). But the management seems to have ignored the matter. Clause 29 of the certified Standing Orders of Maheshpur colliery envisages that an employee may be suspended, fined or dis-

missed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct, provided that suspension without pay whether as a punishment or pending an enquiry shall not exceed 10 days. Giving false information regarding name, age, father's name, qualification or previous service at the time of employment by any workman is considered as one of the acts of misconduct. Even if it is assumed that Sadhu Passi gave false information regarding his name to the management of Maheshpur Colliery at the time of his induction in service, that act of his is a misconduct within the meaning of certified Standing Orders for which a departmental enquiry should have been held because no notice of termination of his service was given to him nor was any compensation paid to him in lieu of such notice. In this view of the matter the action of the management of Maheshpur colliery is considered to be illegal and unjustified.

12. Anyway, Sadhu Passi was a workman of Bararee colliery. The award of the Tribunal was that he should be reinstated in service with full back wages. There is no evidence on record to indicate that the award of the Tribunal has been set aside. In such circumstances it would be just and proper for the management of M/S.B.C.C. Ltd. to reinstate him in service with back wages for the period he remained in the service of Maheshpur colliery.

13. Accordingly, the following award is rendered—the action of the management of Maheshpur colliery of Govindpur Area No. III of M/S.B.C.C. Ltd. in terminating the service of Sadhu Passi employed there as Pancham Passi, Miner/Loader with effect from 28-4-86 is not justified. The management of M/s. B.C.L. is directed to reinstate him in service in terms of the award dated 21-1-1971 passed by the Central Govt. Industrial Tribunal No. 2, Dhanbad, with back wages excepting the period during which he was employed in and paid wages by Maheshpur colliery.

In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer
[No. L-20012(167)/87-D.III(A)[IR(Coal-I)]

नई दिल्ली, 1 दिसंबर, 1989

का. आ. 3174.—औदोधिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार मेनेंट्रैट सर्कार मेसर्स मी. मी. लिमि. टेक की गिरिधीह कलियरी के प्रबन्धन से संबंध नियोजकों और उनके कर्मचारों के बीच, भनुवंश में निश्चिट औदोधिक विवाद में मेनेंट्रैट सर्कारी औदोधिक प्रधिकरण, (स. 2) घनबाद के पदांत द्वारा प्रवापित करनी।

New Delhi, 1st December, 1989

S.O. 3174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Giridih Colliery of M/s. C.C. Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

REFERENCE NO. 166 OF 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act., 1947.

PARTIES :

Employers in relation to the management of Giridih Colliery of M/s. CCL and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri Chintamani Verma, Secretary, RCMS Giridih Branch.

On behalf of the employers.—Shri R.S. Murthy, Advocate.

STATE.—Bihar.

INDUSTRY—Coal.

Dated, Dhanbad, the 7th November, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(182)|86-D.IV(B), dated the 15th 16th/24th June, 1987.

THE SCHEDULE

"Whether the action of the management of Giridih Colliery of C.C. Ltd., P. O. Beniadib, Dist. Giridih in denying promotion to Sri A.R. Das Gupta when he has been selected by th DPC as Asstt. Storekeeper and making discrimination by promoting Sri Surendra Dubey as Asstt. Storekeeper is legal and justified ? If not, to what relief the workman concerned is entitled ?"

In this case only the workman filed their W.S. The management appeared but did not file his W.S. Thereafter several adjournments were granted to the management for filing W.S. Subsequently when the case was fixed for filing W.S. by the management, both the parties appeared before me and filed a Joint compromise petition. I heard both the parties on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the said compromise petition and pass an Award in terms of the compromise petition which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer

[No. L-24012(182)|86-D.IV(B)|IR(Coat-I)]

K. J. DYVA PRASAD, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUS-
TRIAL TRIBUNAL NO. 2 DHANBAD

REF. NO. 166/87

Employers in relation to the Management of Giridih Colliery of Central Coalfields Ltd., P. O. Beniadib, Dist. Giridih.

AND
Their workmen

JOINT COMPROMISE PETITION OF EMPLOYERS AND WORKMEN

The above mentioned employers and workmen most respectfully beg to submit jointly as follows:—

(1) That the Management has since promoted the workman concerned Sri A. R. Dasgupta as Lower Division Clerk in clerical Grade II w.e.f. 26-5-89 after taking into account the request of Sri A. R. Dasgupta who preferred light work instead of work in the Stores Deptt.

(2) That in view of the above, the workman concerned and the sponsoring union do not wish to pursue the above dispute pending before this Hon'ble Tribunal and pray that a 'no dispute' award may be given.

Sd/-

Project Officer
Giridih Project

Central Coalfields Limited

For & on behalf of Employers.

Sd/-

(Chintamani Verma)

Secretary

Rashtriya Mazdoor Sangh

Giridih Branch

For & on behalf of Workmen.

Sd/-

(A. R. Dasgupta)

Workman Concerned

Dated at Giridih the 1-9-89

नई दिल्ली, 1 दिसम्बर, 1989

का. अ. 3175.—भारत प्रदेश राज्य सरकार ने कर्मचारी राज्य बीमा प्रधिनियम, 1948 (1948 का 34) की आरा 4 के अन्दर (अ) के अनुसरण में श्री जो. कुमारस्वामी रेडी के स्थान पर श्री एस. के. भरोड़ा सचिव, स्वास्थ्य चिकित्सा, परिवार फलाण विभाग को कर्मचारी राज्य बीमा नियम में उस राज्य का प्रतिनिधित्व करने के लिए माननि दिया गया है;

धन्तः मम केन्द्रीय सरकार, कर्मचारी राज्य बीमा प्रधिनियम, 1948 (1948 का 34) की आरा 4 के अनुसरण में, भारत सरकार के बम

मंत्रालय की प्रधिसूचना संख्या का. आ. 545 (अ), दिनांक 25 जुलाई, 1993 में निम्नलिखित संगोष्ठन करती है, अधीतः—

उक्त प्रधिसूचना में, “(रज्य सरकार द्वारा धारा 4 के बाटु (अ) के प्रधीन नामनिर्दिष्ट)” शीर्षक के भीचे नंबर 8 के सामने की प्रविधि के स्थान पर निम्नलिखित प्रविधि रखी जाएगी, अधीतः—

श्री एस. के. अरोड़ा,
सचिव, भारतीय प्रदेश सरकार
स्व.स्पष्ट चिकित्सा परिवर्क कल्याण विभाग,
हैदराबाद।

(संख्या धू.-16012/8/87-एम-1)
ए. के. अरोड़ा, प्रवर्त सचिव

New Delhi, the 1st December, 1989

S.O. 3145.—Whereas the State Government of Andhra Pradesh has, in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948) nominated Shri S. K. Arora, Secretary, Health, Medical and Family Welfare Department to represent that State on the Employees' State Insurance Corporation, in place of Shri G. Kumaraswamy Reddy;

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour S.O. No. 545(E), dated the 25th July, 1985, namely:—

In the said notification, under the heading “[Nominated by the State Government under clause (d) of section 4]”, for the entry against Serial Number 8, the following entry shall be substituted, namely:—

Shri S. K. Arora,

Secretary to the Government of Andhra Pradesh,
Health, Medical & Family Welfare Deptt.,
Hyderabad.

[No. U-16012/9/87-SS. I]
A. K. BHATTARAI, Under Secy.

नई विल्ली, 6 सिद्धम्बर, 1989

का. धा. 3176 शोधोगिक विवाद अधिनियम, 1947 (947 का 14) की धारा 17 के प्रत्यारोपण में ऐनीय सरकार, अनुबंध में वर्णीय गए, राष्ट्रीय शोधोगिक अधिकरण, बम्बई के पंचाट को, जो केवलीय सरकार को 16 सप्टेंबर, 1989 को प्राप्त हुआ था प्रकाशित करती, जो (i) हिन्दुस्तान मणिन ट्रॉल लि., बंगलोर (ii) भारत ग्रन्थ घटन लि., बंगलोर और कोलार गोल्ड फीफ्स, (iii) हिन्दुस्तान एरोनाइटिस लि., बंगलोर, नासिक और बंगलपुर (iv) इंडियन टेलीफोन इंडस्ट्रीज लि., बंगलोर और (v) भारत इंडियनोनिक्स लि., बंगलोर के प्रवर्पत्तिकों से सम्बन्धित नियोजकों और उनके कर्मकारों के बीच श्रीधोगिक विवाद के बारे में है।

[सं.एम-51037/2/83 आई. एस. एम.]
अधीक्षक साहू, उप निदेशक

New Delhi, the 6th December, 1989

S.O. 3176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of National Industrial Tribunal Act Bombay, as shown in the annexure, in the industrial dispute between employers in relation to the management of (i) Hindustan Machine Tools Ltd., Bangalore, (ii) Bharat Earth Movers Ltd., Bangalore and Kolar Gold Fields, (iii) Hindustan Aeronautics Ltd., Bangalore, Nasik and Barrackpore, (iv) Indian Telephone Industries Ltd., Bangalore and (v) Bharat Electronics Ltd., Bangalore

and their workmen, which was received by the Central Government on the 16th November, 1989.

[No. L-51037/2/83-I&E(SS)]
ASHOK SAHU, Dy. Director

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT BOMBAY

PRESENT :

Mr. Justice M.S. Jamdar, Presiding Officer

REFERENCE NO. NTB-1 OF 1984

PARTIES :

Employers in relation to the management of
M/s. Hindustan Machine Tools Limited,
M/s. Hindustan Aeronautics Limited,
M/s. Bharat Electronics Limited,
M/s. Bharat Earth Movers Limited and
M/s. Indian Telephone Industries Limited

AND

their workmen.

APPEARANCES :

For the Management : Mr. K. Kasturi, Advocate
and Mr. P.K. Rele, Advocate.
Mr. M. C. Natasimhan, Advocate
For Hindustan Aeronautics
Employees Association, Bangalore.
For H.A.L. Workers' Union,
Hyderabad.
For H.A.L. Employees
Association, Lucknow.
For Hindustan Aeronautics
Employees' Association,
Sunabeda (Orissa).
For Hindustan Machine Tools
Employees' Association,
Bangalore.
For H.E.M.L. Employees
Association, K.G.F.
For B.E.M.L. Staff Association
(H.O. & Marketing Division),
Bangalore.
For B.E.M.L. Employees'
Association, Bangalore.
For Bharat Electronics
Employees Union, Bangalore
For Bharat Electronics Limited
Workers' Unity Forum, Bangalore.

Mr. M.C. Narsimhan, Advocate
 For Bharat Electronics Limited
 Mazdoor Union, Ghaziabad.
 For Bharat Electronics Limited
 Karmachari Trade Union,
 Ghaziabad.
 For Indian Telephone Industries
 Employees Union, Bangalore.
 For Hindustan Aeronautics
 Limited (Nasik Division)
 Employees Union, Ojhar,
 Nasik District.
 Mr. M. C. Narsimhan, Advocate and Mr Gopala
 Gowda, Advocate
 For Hindustan Aeronautics
 Employees Association,
 Bangalore.
 Mr. Gopala Gowda, Advocate
 For Bharat Electronics Workers'
 Union, Barrackpore.
 Mr. D. Swetadri, Advocate
 For H.M.T. Mazdoor Sangh,
 Bangalore.
 For Bharat Electronics Limited
 Mazdoor Sangh, Bangalore.
 Mr. D. Leelakrishnan, Advocate.
 For H.M.T. Head Office
 Employees' Association,
 Bangalore.
 For HMT Karmika Sangh, Bangalore
 For HMT Watch Factory Employees'
 Union, Bangalore.
 For HMT Horological Machinery
 Division Employees Union,
 Bangalore.
 For HMT Workers & Staff Union,
 Hyderabad.
 For HMT Watch Factory III
 Employees' Union, Srinagar.
 For HMT Karmika Sangha,
 Pinjore, Haryana.
 For HMT Shramika Sangha, Ajmer.
 For HMT Watch Factory Employees'
 Union, Tumkur.
 For HMT Employees' Union,
 Kalamassery.
 Mr. D. Leelakrishnan, Advocate
 For Bharat Electronics Limited

Karmika Sangh, Bangalore.
 For Bharat Electronics Shramik
 Trade Union, Ghaziabad.

Bombay, dated the 10th day of November, 1989

AWARD

The main dispute which is referred for adjudication and which led to strike in various units of Bharat Electronics Limited (hereinafter referred to as B.E.L.), Bharat Earth Movers Ltd. (hereinafter referred to as B.E.M.L.), Indian Telephone Industries Limited (hereinafter referred to as I.T.I.) Hindustan Aeronautics Limited (hereinafter referred to as H.A.L.) and Hindustan Machine Tools Limited (hereinafter referred to as H.M.T.) (all these five undertakings collectively referred to hereinafter as Bangalore based public sector undertakings) and to lock-out in the units at Bangalore of B.E.L., B. E.M.L., H.A.L., and I.T.I. (there was no lock-out in any of the units of H.M.T.) and in Kolar Gold Fields (hereinafter referred to as K.G.F.—a unit of B.E.M.L.), arose out of the demand made by various unions, on the basis of certain clauses in 1978 settlements in the Five Bangalore Based Undertakings, for parity in minimum wage (Basic+Dearness Allowance) with the minimum wage payable to the employees of Bharat Heavy Electricals Limited (hereinafter referred to as B.H.E.L.) with effect from 1-9-1978, under the Settlement dated 8/9/1980.

2. The minimum wage (Basic Pay + Dearness Allowance) for the lowest category of workmen was the same all along in all the five Bangalore based public sector undertakings. The wage structures in these industries were constructed on this minimum basic wage. By settlements which were entered into on various days in 1974 and which were finalised in 1974-75 the minimum wage of the lowest category of workmen was fixed at Rs. 300 consisting of basic pay of Rs. 200 + Dearness Allowance of Rs. 100. In B.E.L. the settlements were dated 25-2-1974, 21-11-1974 and 12-12-1974 and were entered into by the management of the said undertaking with the B.E.L. Employees Union (hereinafter referred to as B.E.E.U.). The settlements in B.E.M.L. with the B.F.M. Employees Association (hereinafter referred to as B.E.M.E.A.) at Bangalore and K.G.F. were dated 11-4-1974 and 23-11-1974. In H.A.L. the settlements were entered into on 11-2-1974 and 17-11-1974 by the management of H.A.L. with various Unions representing workmen in various units of H.A.L. at Bangalore and other places. In I.T.I. the settlements were entered into by the management with the representatives of I.T.I. Employees Union (hereinafter referred to as I.T.I.E.U.) on 8-3-1974, and 15-2-1975. By virtue of these settlements the minimum wage of Rs. 300 became payable with effect from 1-10-1973, except in I.T.I. where the settlements were made effective from 1-12-1973. In all these undertakings, however, the settlements were to be in force till 31-12-1976. At the time of these settlements, the I.T.I. was linked with All India Consumer Price Index and on the basis of the Index prevailing as on 1-12-1973, the Dearness Allowance payable on the basic wage is 20%

to Rs. 91 and hence in order to bring uniformity in the minimum wage the employees of the I.T.I. were paid City Compensatory Allowance (hereinafter referred to C.C.A.) of Rs. 9 at 4½% of the basic pay.

3. In B.H.E.L. by the agreement dated 17/18-9-1973, (Exh. O.W.-1) the minimum wage was fixed at Rs. 258.70/- Comprising of basic pay Rs. 200/- and Dearness Allowance of Rs. 58.70/- at the All India Consumer Price Index of 200 for industrial workers with 1960 base. By the first wage revision effected by the agreement dated 17/18-1-1974, the minimum wage was fixed at Rs. 300/- consisting of basic pay of Rs. 260/- which in turn included the fixed dearness allowance element) + Rs. 40/- Dearness Allowance linked to 201 points of the All India Consumer Price Index with 1960 base. This minimum wage and the wage structure constructed on its basis came into force with effect from 1-9-1973. This revision in B.H.E.L. was made on the basis of clause 7 of the agreement dated 17/18-9-73, which provided that the settlement was to be in force for the period of four years from 1-9-1973, but the workmen were given the right of review in case negotiations which were then under way in HMT, and HAL yielded a higher total minimum wage within the following 12 months. This agreement expired at the end of August 1977 and as such was due for review and revision from 1-9-1977 and negotiations in that behalf were commenced in March 1978, as can be seen from the recitals in the settlement Exh. O.W.-4 dated 8/9-1-1980.

4. As mentioned above, 1974 settlements in B.E.L., I.T.I., HAL, and B E M L expired on 31-12-1976, and hence the Unions submitted charters of demands in the early part of 1977. Conciliation proceedings were held between the management of five public sector undertakings and their workmen and amicable settlement were arrived at between the parties on 25-5-1978. The Memorandum of Settlements in B.E.L; B.E.M.L; I.T.I; H.A.L; and H.M.T. are at Exh. M-BEL-2, Exh. M-BEML-3, Ext. M-ITI-3, Exh M-HAL-2 and Exh. M-HMT-2 respectively. Term number 1 of all these settlements was uniform. It was as follows :—

"The Union agrees to accept the offer of the management with regard to pay scales, quantum of Dearness Allowance, quantum of House Rent Allowance and Fitment benefits and method of fixation of pay in the revised pay scales as detailed in Annexure-I. This, however, is without prejudice to the Union's right to take up the issues of revision of minimum wages and the enhancement of the rate of neutralisation of Dearness Allowance beyond Rs. 1.30 per point with the Government of India and if the Government of India agrees to the improvement in the minimum wages or the Dearness Allowance neutralisation rate the management agrees to make necessary modification to the minimum wages and Dearness Allowance neutralisation rate and consequential adjustment in the wage structure in consultation with the Unions."

5. It appears that by settlement dated 25-5-1978, all the demands of the workmen were not settled and conciliation proceedings continued for arriving at a settlement on some issues which were mentioned in the settlements dated 25-5-1978. These proceedings also resulted in settlement and Memorandums of Settlements were entered into in case of H.A.L. on 30-8-78, (Exh. M-HAL-2), in BEML on 31-8-1978 (Exh. M-BEML-35), in ITI on 1-9-1978 (Exh. M-ITI-3), in HMT on 2-9-1978 (Exh. M-HMT-3) and in BEL on 3-9-1978 (Exh. M-BEL-3).

6. Terms number 1.0 and 1.1 of the settlement in BEL (Exh. M-BEL-3) were as follows :—

"1.0 This agreement is without prejudice to the Union's right to take up the issues of revision of minimum wages and the enhancement of the rate of neutralisation of Dearness Allowance at Rs. 1.30 per point rise/fall in the local CPI, with the Government and if the Government of India agrees to improve the minimum wage or the neutralisation rate beyond Rs. 1.30 per point, the Management agrees to make necessary modifications to the minimum wage, DA neutralisation rate and consequential adjustments in the wage structure in consultation with the Unions.

1.1. If the minimum wages, comprising of pay and Dearness Allowance, or if the rate of neutralisation of Dearness Allowance is Altered to a higher rate than agreed to in this settlement, in any other Engineering Central Public Sector Undertaking such as BHEL, HMT etc., the Management agrees to make necessary modifications in the relevant clauses and consequential adjustments, in consultation with the Unions."

Terms similar to the above find place at clauses (ix) and (x) of part (A) of the settlement in BEML (Exh. M-BEML-35). Those clauses are as follows :—

"(IX) This settlement is however without prejudice to the Union's right to take up the issues of revision of minimum wages and enhancement of the rate of neutralisation of Dearness Allowance beyond Rs. 1.30 per point with the Government of India and if the Government of India agrees to the improvement in the minimum wages and the D.A. neutralisation rate, the Management agrees to make necessary modifications to the minimum wages and DA neutralisation rate and consequential adjustment in the Wage structure in consultation with the Association.

(X) If any comparable engineering industry in the Central Public Sector such as BHEL, etc. revises the minimum pay, and DA as well as the DA neutralisation rate beyond

what is agreed to in this settlement, the issues will be negotiated bilaterally and consequential adjustment made in the wage structure."

7. Similar terms appear at serial Nos. 4 and 5 of the settlement in HAL (Exh. M-HAL-2) with slight variation in the second term. These terms read as follows :—

"4. This settlement is without prejudice to the union's right to take up the issues of revision of minimum wages and the enhancement of the rate of neutralisation of DA, beyond Rs. 1.30 per point with the Government of India and if the Government of India agrees to the improvement in the minimum wages or the DA, neutralisation rate, the management agrees to make necessary modification to the minimum wages and DA, neutralisation rate and consequential adjustment in the wage structure in consultation with the union.

5. If a higher minimum wage or higher rate of neutralisation of CPI is agreed to in any comparable engineering industry such as BHEL in the Central Public Sector, the management agrees to review the corresponding provisions in this settlement and make consequent adjustments in the wage structure in consultation with the Union."

8. The ITI Settlement (Exh.M-ITI-3) did not contain any terms similar to those mentioned above, but term number 1 of the earlier settlements dated 25-5-1978, is reiterated in the preamble of this settlement. The Settlement in HMT (Exh.M.-HMT-3) did not contain any term similar to either term number 1.0 or term number 1.1 in the above mentioned BEL Settlement. Similarly, the settlement in Ghaziabad Unit of BEL did not contain any term similar to term number 1.1 in BEL Settlement (Exh.M-BEL-3).

9. As mentioned above, the agreements dated 17/18-9-1973, and 17/18-1-1974, in BHEL, expired at the end of August 1977 and negotiations for review and revision of the wage scales including the minimum wage were going on between the BHEL management and its workmen in 1978 when Settlements were entered into by the five Bangalore based public sector undertakings. During the negotiations between the BHEL management and the joint committee for BHEL it was felt that the final negotiations on wage revision should be deferred till after the guidelines to be evolved by the Government in consultation with the Trade Unions on wage revision in public sector became available. An interim settlement however was reached on 1-7-1978, which provided for interim payment of 10 per cent of basic pay and Dearness Allowance. An agreement was reached in the meeting held on 3rd and 4th November, 1979, in respect of wage increases to be given and the final agreement on wage revision was reached on 8/9-1-1980. By this agreement the wages as on 1-9-1978, for an unskilled employee at the lowest level was fixed at Rs. 500 per month at All India Consumer Price Index 327

(1960-100). The break up of this wage was as follows :—

Basic Pay	Rs. 335.00
Fixed D.A. at C.P.I.-300	Rs. 129.90
V.D.A. at Rs. 1.30 per pt.	Rs. 35.10
(At Consumer Price Index 327).	

Rs. 500.00

The agreement was to be effective from 1-9-1978, and was to be in operation for a period of four years from 1-9-1978. This agreement was implemented in April, 1980.

10. In view of this revision of minimum wage in BHEL and consequent formulation of revised wage structure, the unions representing workmen in the five Bangalore based Public Sector Undertakings raised the question of revision of minimum wage in these industries as per the minimum wage as settled in BHEL. The President of ITI employees Union wrote to the Executive Director, Bangalore Complex of the ITI on 18-4-1980, vide Exh.OW-41 calling upon the management of ITI to implement immediately the minimum wages as settled in BHEL with the approval of the Government of India and also to make necessary consequential adjustments in the wage structure in ITI in consultation with the Union. The President of the BEL Workers' Unity Forum also took up the matter with the Executive Director and the officiating Managing Director of BEL vide letter dated 7-6-1980, (Exh. M-BEL-8) pointing out that in view of the settlement in BHEL the difference in minimum wage in BHEL and the minimum wage in BEL came to Rs. 108.80 and called upon the management to pay this difference with effect from 1-9-1978.

11. Negotiations were commenced between the management and the Unions in May 1980, but no agreement could be reached till 12-9-1980, on which date the negotiating trade unions of Bangalore based Public Sector Undertakings in Bangalore and at K.G.F., which had formed in the meanwhile Joint Action Front, (hereinafter referred to as JAF) formulated a common proposal for submission to the management and accordingly the negotiating unions submitted common demands to the respective undertakings in the matter of revision of wages. The demands were as follows :—

1. The existing Scales of Pay should be restructured by adding Rs. 30 at the minimum and at all stages in each case.
2. The irreducible Minimum D.A. for Bangalore as on 1-9-1978 should be revised to Rs. 130 as against Rs. 125.
3. For the existing employees, Basic Pay should be refixed in the following manner :
 - (a) Add Rs. 30.
 - (b) Add one Increment.

- (c) Add one more increment in lieu of next higher stage (to avoid anomalies) and to provide for consequential adjustment benefits.
- 4. City Compensatory Allowance should be paid at the rate of 6 per cent (in all places).
- 5. The Fitment Benefit which is not extended to the employees joining after the date of Agreement should be extended to them.
- 6. The arrears on account of the above should be worked and paid with effect from 1-1-1979."

12. The letter dated 12-9-1980 containing these demands did not evoke any response from the managements and except the management of BEL it was not even replied to. The negotiating unions therefore gave notices to the respective managements that the workman of those industries would go on indefinite strike any day after 10th December, 1980. The managements were also informed that the workers, with a view to persuade the managements to concede their demands, would indulge in slogan shouting during lunch break on three days and would wear black badges and take a procession to the Raj Bhavan on 10-12-1980. This notice of strike was given to BEML by the General Secretary of BEMEA on 25-11-1980. (Exh.M.-BEML-5). The notice to ITI was also given on the same day. It is at Exh.M-ITI-4. To the managements of BEL, HMT (Horological Division) and KGF, the notice was given on 22-11-1980. The notice to HAL management was given on 4-12-1980 (Exh.M-HAL-31). Conciliation proceedings which were initiated at about the same time were continued during the period of strike notice and hence the strike was postponed to 26-12-1980 on which date the workman struck work rejecting the offer made by the management just before the commencement of the strike. At that stage, the managements had offered an ad-hoc lumpsum payment of Rs. 300 and Rs. 20 p.m. with prospective effect subject to the conditions that the proposed strike was called off and the existing settlements (1978 settlements) extended upon 31-12-1982.

13. There was no strike in HMT I & II Units at Bangalore, HMT Watch Factory-IV, at Tumkur, HMT Bearings Ltd. Hyderabad and HMT Units at Panjaori, Ajmer, Srinagar, and Aurangabad. There was also no strike in the Zonal Offices of the BEML at New Delhi, Bombay, Calcutta, Madras and the District Offices at Ranchi, Goa, Ahmedabad, Guwahati and Bhopal.

14. After the strike was commenced on 26-12-80, conciliation proceedings were commenced on 27-12-80. These proceedings continued upto 5-2-1981, on which date the conciliation officer submitted his failure report. The strike in HMT Watch Factory at Bangalore was called off by the HMT Employees Union on 6-3-1981 and thereafter the JAF took a general decision on 12-3-1981 to withdraw the strike. Accordingly, the strike was withdrawn on 14/15/16-3-1981, and the workers resumed work on subsequent days. However, as expected by the striking unions the negotiations for settling the dispute

were not commenced after withdrawal of the strike and hence the JAF took a decision to launch an indefinite hunger strike on any day after 15-4-1981. The hunger strike was actually commenced by prominent leaders of JAF on 29-4-1981. It continued till 10-5-1981. But before that however, on the ground that the strike was not in fact withdrawn and that the workers continued their strike and violent activities inside the factory, the managements of BEL, BEML, ITI and HAL declared a lock-out in all their units located at Bangalore with effect from 6-5-1981. Lock-out was also declared at KGF for the same reasons with effect from 8-5-1981. After the lock-out was declared fresh conciliation proceedings were commenced and these proceedings culminated into the settlement dated 9-6-1981. Before that in view of the understanding reached about the settlement and in view of the assurance given by the negotiating unions the lock-out was lifted with effect from 23-6-1981.

15. The last paragraph of the preamble and the terms of all settlements dated 9-6-1981, in five Bangalore based Public Sector Undertakings were identically worded. They read as follows :—

"As a result of further bipartite and tripartite discussions and taking the totality of the circumstances into account and without prejudice to the contentions of either party on the issue referred to at para 2 above, the following settlement has now been arrived at :

II. TERMS OF SETTLEMENT

- (i) The wage settlements dated 3rd and 4th September 1978 which are to expire on 30-6-1981 are extended upto 31-12-82.
- (ii) The workmen on the rolls of the Company as on the date of this settlement will be paid a lumpsum of Rs. 700/- (Rupees seven hundred only)—
- (iii) With effect from 1-1-1981, for the period they are entitled to wages, they would also be paid an ad-hoc allowance of Rs. 25/- per month. This amount will count as pay for all purposes except for pay fixation.
- (iv) All other terms and conditions relating to pay, allowances and other monetary benefits in terms of the settlements dated 3rd September and 4th September 1978 will continue for the extended period of the settlement.
- (v) The Union assures the Management that they will assist in the maintenance of discipline, improving productivity and ensuring smooth production in the factory."

16. Even after the settlement dated 9-6-1981, the workman continued to press for wage parity in minimum wages with BHCL with effect from 1-9-1978, on the ground that the settlement dated 9-6-1981, did not settle the demands made by the unions on 12-9-1980. They sought a reference to the Industrial

Tribunal in respect of the dispute raised by them on 12-9-1980, on the basis of the relevant clauses in 1978 settlements. For that purpose they filed writ petition bearing numbers 28974 of 1981, 1401 of 1982; 24038 of 1982, 28280 of 1981, and against BEL, ITI, HAL and BEML respectively in the Karnataka High Court. These writ petitions were allowed on 9-8-1982, and the Government of Karnataka was directed to make a reference to the appropriate Tribunal under section 10 of the Industrial Disputes Act, 1947. Accordingly, the Government of Karnataka made two references to the State Industrial Tribunal by order dated 23-4-1982, one in respect of the main dispute about parity and the second about the legality of the strike and lock-out. Before that the West Bengal and Maharashtra Government's had already made similar references to the respective state Industrial Tribunals.

17. There was further wage revision in BHEL with effect from 1-9-1982. It was made effective retrospectively by the agreement dated 5-5-1983. By this agreement minimum wage in BHEL as on 1-9-1982, was fixed at Rs. 781.90 per month, which consisted of basic pay of Rs. 550.00 and Dearness Allowance of Rs. 231.90 at All India Consumer Price Index of 470 (1960=100). The revised wage structure on the basis of this revision of minimum wage was formulated by the supplementary agreement on wage revision and other issues dated 15-6-1983. These agreements were to remain in force upto 31-8-1986.

18. The period of 1978 settlements in the five Bangalore based public sector undertakings, which was extended by the Settlement dated 9-6-1981, expired on 31-12-1982. Consequently, there were fresh demands by the Union and fresh Conciliation Proceedings. These Conciliation Proceedings culminated into settlements by which the revised minimum wage (Basic Pay + Dearness Allowance) was fixed at s. 801.00, consisting of Basic Pay of Rs. 550.00 + Dearness Allowance of Rs. 251.00 at All India Consumer Price Index of 485. The Settlement in BEL was entered into on 26-11-1983 ; the Settlement in BEML is dated 29-11-1983 ; the Settlement in HAL is dated 7-12-1983, and the Settlement in ITI is dated 5-12-1983.

19. Thereafter, at the instance of the managements the Central Government made the present reference on 10/30-5-1984. To this reference the units of the five Bangalore based Public Sector undertakings situated outside Bangalore were not made parties and hence writ petition number 13098 of 1984 was filed in the Karnataka High Court for necessary direction to the Central Government. By an order dated 20-2-1985 passed by the High Court the Central Government was directed to consider the question of including the other units in the reference. Accordingly, by order dated 3-5-1985, the present reference was modified and all the units and all Regional and Sales Offices of all five undertakings were added as parties to the reference which is in the following terms :

"1. Are the workmen justified in demanding revision of wages bringing their wages on par with BHEL in view of the relevant clauses in the 1978 settlement ?

2. If so, what should be the quantum and the period for which such quantum is to be paid in view of the BHEL settlement subsisting till the end of August 1982 ?
3. Are the workmen of Hindustan Machine Tools Ltd, Bangalore, (ii) Bharat Earth Movers Ltd., Bangalore and Kolar Gold Fields, (iii) Indian Telephone Industries, Bangalore, (iv) Bharat Electronics Ltd., Bangalore and (v) Hindustan Aeronautics Ltd., Bangalore justified in going on strike w.e.f. 26-12-1980? If so, to what relief are the workmen entitled ?
4. Are the managements of (i) Hindustan Machine Tools Ltd., Bangalore; (ii) Bharat Earth Movers Ltd., Bangalore and Kolar Gold Fields; (iii) Indian Telephone Industries, Bangalore, (iv) Bharat Electronics Ltd., Bangalore and (v) Hindustan Aeronautics Ltd., Bangalore justified in declaring lock-outs of their establishments with effect from 8/9-5-81 to 4-6-81 at Kolar Gold Fields and 7-5-81 to 2/3-6-81 at Bangalore? If not, are the workmen entitled to wages for the lock-out period or to any other relief?"
20. The Hindustan Aeronautics Employees' Association (HAEA), the Bharat Electronics Employees' Union (BEU), Bangalore the Bharat Earth Movers Employees' Association, (BEMEA), Bangalore, the Bharat Earth Movers (Staff) Employee Association, Bangalore and Bharat Earth Movers Employees Association—KGF filed a common statement of claim. The Unions stated the chequered history of this reference and contended that the workmen are justified in demanding that wages and wage rates be revised so as to bring the minimum wages on par with that obtaining in BHEL and there is absolutely no justification for the employers to refuse this extremely fair demand put up by the Unions subsequent to the settlement in the BHEL. The Unions further contended that the employers namely HAL, BEML and BEL are public sector undertakings coming under the Ministry of Defence and owned and managed by the Government of India and thus fall within the meaning of 'State' as referred to in Article 12 of the Constitution of India. According to the Unions, all the five Bangalore based public sector undertakings fall within the group of Engineering Industries and all of them have fashioned their wage structure on the basis of the recommendations made by the Central Wage Board for Engineering Industries appointed by the Government of India in the year 1968 and from 1969 onwards there was certain amount of uniform pattern in the wage level etc., subject to minor variations. The Unions further contended that from the persual of 1974 settlements it will be clear that an attempt was made to even out interse differences in levels of wages and near uniform pattern of wages was evolved by and large, and the minimum wage for the unskilled worker which is the basis of wage structure was agreed to be the same in all the five public sector undertakings at Bangalore, and also in their Units outside Bangalore and though there was some

variation in Dearness Allowance and House Rent Allowance in branches and establishments outside Bangalore the Basic Wage of unskilled worker remained the same. According to the Unions, during the discussions in the course of collective bargaining on the charter of demands placed by the Unions in April 1977, the employers took a stand that the Government of India was not permitting the concerned public sector management to give a higher minimum wage than what was proposed for settlement and informed that the Government of India was aiming to bring a uniform minimum basic wage in all public sector undertakings in the country. This stand, according to the Unions, led to incorporation of a clause in the settlement providing for bilateral negotiations and consequential adjustment in the wage structure in case any comparable engineering industry in the Central Public Sector were pay higher minimum wage than what was paid under the settlement. The interim settlement between the workmen and the management of BHEL regarding wages was also taken into account while the parties negotiated the settlement in 1978. The Unions further contended that though there was some slight difference in the wording of the relevant clauses in the 1978 settlements, the intention of the parties was to give an opportunity to the workmen to raise the question of wage revision after the 1978 settlement if and when occasion arose. According to the Unions, the relevant clause in the 1978 settlement gave liberty to the workmen to raise the question of wage revision as and when there was final settlement in BHEL or as and when the Government of India indicated a change of attitude in the matter of wage fixation. The Unions further contended that in view of the settlement dated 8/9-1-1980, in BHEL, the relative difference in the minimum wage of the unskilled workman in BHEL and the workman in the Units of HAL, BEL, BEML at Bangalore and at KGF was as follows :

	BHEL	BEL, BEML, HAL	
Basic Wage	Rs. 355.00	Rs.	305.00
Dearness Allowance	Rs. 165.00	Rs.	125.00
House Rent Allowance	Rs. 39.00	Rs.	35.00
City Compensatory Allowance.	Rs. 15.60	Rs..	
TOTAL	Rs. 554.60	Rs.	465.00

In addition in BHEL Settlement there was provision for giving one more increment in revised scale to all workman on the roll of the Company on the date of the settlement. According to the Unions, this meant that the Government of India which had the ultimate voice in deciding the wage levels of the different public sector undertakings had approved of a new wage level different from the one adopted in the 1978 settlement thus creating a new situation which made the 1978 settlement open for review and entitling the workmen either to press their demands made in notice of demand or to place any other reasonable demand in respect of revision of wages etc. The Unions further stated that in view of this situation the Unions

reopened negotiations and various suggestions were made in the course of the discussions, for a fresh revision of the minimum wages and the minima of various grades, including the Dearness Allowance and House Rent Allowance, and since it was suggested that the demand be concretised the Unions sent concrete proposals in the Month of September 1980 and prevailed upon the managements for early settlement of the demand. However, though the entitlement of workmen for higher wages was not disputed by the employers the managements did not want to go to the full length to meet the demands of the workmen and wanted to impose without justification new conditions such as extension of the life of the 1978 settlements. According to the Unions, even in 1978, the workmen were asking for higher minimum wage as the then existing wage was inadequate but since the managements pointed out that their hands were tied and that they were prepared to consider an upward revision if the Government of India permitted the same or showed any relaxation in the matter of wage policy the workmen had to agree to the terms of the settlement treating it as a tentative arrangement. The Unions further contended that the workmen of the two units of BHEL, before those units became part of BHEL, were getting less minimum wages in 1977 than the workmen of the five Bangalore based public sector undertakings but since they became units of BHEL they became entitled to a wage higher than the wages in the five public sector undertakings thus creating a new situation which the Unions had to take serious note of, particularly as the Government of India, which was ultimate owner, was determining the wage policy of all these undertakings. According to the Unions in view of reluctance of the Government of India to change the rate of D.A. neutralisation fixed in 1974 at Rs. 1.30 per point even though the Consumer Price Index had risen very sharply and several industrial undertakings in private sector in the engineering group of industries had moved to higher rate of Dearness Allowance, the wages or emoluments offered in 1978 cannot be considered as adequate and satisfactory and hence the 1978 settlement must be considered as tentative arrangement in the matter of wage fixation. Moreover, there was big jump in the Consumer Price Index by the end of 1980 and as the managements had refused to agree to concede the reasonable proposal made by the Unions the latter had to give a notice of strike. According to the Unions, the strike was justified; it was total and peaceful but the managements backed up by the Government of India, were extremely hostile to the workmen and were against any demand for parity or equality with BHEL even at the minimum level and took firm posture almost in a mood of teaching a lesson to the striking workmen and hence the strike could not be resolved. The Unions maintained that the managements were responsible for prolonging the issues and rejected the various reasonable proposals put forward by the Unions. The Unions further contended that the lock-out was neither justified nor was it legal nor was there any justification for prolonging it, and hence the workmen are entitled to get full wages for the strike period as well as for the period of lock-out. The Unions further contended that in normal course the State Government should have referred the dispute for adjudication either during the course of

atleast at the end of it but the State Government did not take any action to refer the dispute for adjudication, even after the lock-out, inspite of several requests made by the Unions and even though the Conciliation Officer had recommended that the dispute be referred for adjudication. According to the Unions, the Government of India was a stumbling block in the way of the State Government for making any reference. As regard the quantum of increase in wages, the Unions stated their claim as follows :—

- “1. The existing scales of pay should be restructured by adding Rs. 30.00 at the minimum and at all stages in each scales.
2. (a) The irreducible minimum D.A. for KGF as on 1-9-1978 should be revised to Rs. 133 as against Rs. 128.
(b) For the purpose of computation of variable DA, All India Consumer Price Index figures should be adopted instead of local consumer price index.
3. For the existing employees, basic pay should be revised in the following manner;
(a) Add Rs. 20.00.
(b) Add one Increment.
(c) Add one more Increment in lieu of ‘next higher state’ (to avoid anomalies) and to provide for consequential adjustments benefits.
4. City Compensatory Allowance should be paid at the rate of 6 per cent of the basic wages.
5. The Fitment Benefit which is not extended to the employees joining after the date of agreement should be extended to them”.

According to the Unions, the increase has to be effective from 1-1-1977, and must be continued till signing of a new settlement.

21. The Bharat Electronics Mazdoor Sangh (hereinafter referred to as ‘Mazdoor Sangh’), the Bharat Electronics Workers’ Unity Forum (hereinafter referred to as ‘Unity Forum’) and the Bharat Electronics Limited Workers’ Union, Ghaziabad filed separate statements of claim. In its statement of claim the Bharat Electronics Mazdoor Sangh, Bangalore, which is affiliate of All India Mazdoor Sangh, gave the history of the progress of the Bharat Electronics Limited (BEL) during the period from 1958-59 to 1981-82 and stated the back-ground of the 1978 settlement in the five Bangalore based public sector undertakings. The Mazdoor Sangh contended that before and at the time when the Settlement dated 3-9-1978, was signed all the unions had requested for a need based minimum wage but the management of BEL expressed its helplessness in considering the demand of need based minimum wage and hence the Union demanded atleast Rs. 500/- minimum wage for an unskilled workman. According to the Mazdoor Sangh the management representatives

stated that they had no objection to fix Rs. 500/- as minimum wages provided the Government of India agreed to the demand. They also further stated that they had not received any guidelines from the Government in that behalf. Ultimately, the management of BEL and the management of other Bangalore based public sector undertakings requested the Unions to agree to Fitment Benefit ranging from Rs. 40 to Rs. 80 and Ad-hoc lumpsum payments ranging from Rs. 765 to Rs. 1360 and other fringe benefits to which the Unions ultimately agreed but before accepting the suggestions the Union representatives pointed out that wages negotiations were going on in BHEL and there was every likelihood of the BHEL management agreeing for payment of Rs. 500 as the minimum wage to the lowest unskilled worker. It was also pointed out that there was likelihood of better benefits in HMT whereupon the management representatives stated that if in BHEL or HMT the minimum wage of Rs. 500 was agreed to be paid to the lowest unskilled workman, that would mean that there was a green signal by the Central Government for the payment of Rs. 500 as minimum wage and in such a case the BEL management and also other public sector undertaking would have no objection to pay Rs. 500 as minimum wage and hence the Conciliation Officer, the Management Representatives and the Union Representatives agreed to the inclusions of clause 1.1 in the BEL Settlement dated 3-9-1978. According to the Mazdoor Sangh, by virtue of this clause the minimum wage comprising of basic pay and Dearness Allowance will have to be altered to Rs. 508 with effect from 1-1-1977 and the workmen of BEL would be entitled to get the difference of Rs. 108 from 1-1-1977. (Rs. 508 given by the Settlement in BHEL minus Rs. 400 being the minimum wage paid to the lowest unskilled workman in BEL from 1-1-1977). The Mazdoor Sangh claimed that after the details in the BHEL Settlement dated 9-1-1980, became available it addressed a letter to the BHEL management on 26-5-1980, wherein specific request was made to the management to implement clause 1.1 of Settlement dated 3-9-1978 and to raise the minimum wage to Rs. 500 with effect from 1-1-1977. As there was no response to the letter the Mazdoor Sangh addressed another letter dated 26-6-1980, stating that as the management had refused to discuss the matter with the Mazdoor Sangh it would be constrained to approach the Labour Commissioner and the Conciliation Officer for taking appropriate action against the management for violating the agreement/settlement dated 3-9-1978. The Mazdoor Sangh further addressed a letter to the Labour Commissioner on 30-6-1980, requesting him to call for a meeting for Conciliation and to advise the management of BEL not to continue to violate the agreement dated 3-9-1978, and also addressed a letter dated 11-7-1980 to the BEL management protesting against the unfair anti-labour and adamant attitude of the management and informing the management that the Mazdoor Sangh was going to stage a ‘Dharana’ in front of the factory. The Sangh claimed that it staged ‘Dharana’ before the gate of the factory and also observed 48 hours hunger strike before the Main Gate of the Factory as a mark of protest against the unreasonable and adamant attitude of the BEL

management in not implementing clause 1.1 of the settlement dated 3-9-1978. The Mazdoor Sangh also narrated the agitation launched by it, and the legal proceedings filed by it to prosecute the BEL management, for not implementing the aforesaid clause. The Mazdoor Sangh maintained that as all efforts on the part of the workmen, so also the efforts of the Labour Department, failed, the strike was the only alternative left for the poor workmen. According to the Mazdoor Sangh, the strike was intended to bring pressure on the management to amicably settle the issues by properly implementing the 1978 settlement. It was legal and justified but the managements in stead of paying the wages for the strike period and amicably settling the issues declared illegal and unjustified lockout. The Mazdoor Sangh further contended that the BEL settlement dated 3-9-1978, was valid upto 30-6-1981 and from 1-7-1981, the workmen were entitled to put up a fresh charter of demands for improving their service conditions but the management of BEL in a most unjustified manner forced a settlement dated 9-6-1981, on the workmen. According to the Mazdoor Sangh, the settlement dated 9-6-1981, was a most antilabour settlement which bartered away the legitimate and legal rights of more than one and quarter lakhs workers of the public sector undertakings. The Mazdoor Sangh maintained that in view of the continuity of receipt of benefits in BEML and BHEL right from 1973, the workmen of BEL at the lowest were entitled to receive Rs. 508 with effect from 1-1-1977. The Mazdoor Sangh further contended that workmen of BEL were justified in going on strike from 26-12-1980 and hence they are entitled to receive wages for the said period as the strike was resorted to as a last weapon after exhausting all types of efforts and measures to prevail upon the management to implement the relevant clauses of 1973 settlement. The Mazdoor Sangh further contended that the strike was legal, peaceful and non-violent. According to the Mazdoor Sangh, the lock-out was not justified and was resorted to by the management to pressurise the Unions to enter into the settlement dated 9-6-1981, which was illegal, unjustified and amounted to unfair labour practice and bartered away the legal and moral rights of the workmen. The Mazdoor Sangh further contended that the fact that the lock-out was declared on 7-5-1981 after a weekly holiday showed that the lockout was declared with an oblique motive and with malafide intention.

22. The Bharat Electronics Workers' Unity Forum (hereinafter referred to as 'Unity Forum') maintained in its statement of claim that the workmen are justified demanding the revision of wage level so as to bring the minimum wage on par with BHEL and to make necessary consequential adjustments as prevailed in BEML. According to the Unity Forum, the service conditions and wage benefits were being modified from time to time to bring uniformity in all respects and all the public sector undertakings viz. BEML, HAL ITT, HMT and BEL etc. had fashioned their wage structure on the basis of the recommendation made by the Central Wage Board for Engineering Industries. The Unity Forum further contended that it is clear from the relevant clause in the 1978 settlement that the workmen were at liberty

to raise the question of wage revision as and when there was final settlement in BHEL providing for a minimum basic wage for an unskilled worker at a level higher than that made available to the corresponding category of workmen in BEL. According to the Unity Forum, the workmen on the rolls of BEL in 1980, were all entitled to get additional increment on the same basis as provided for in the BHEL settlement. The Unity Forum further contended that even on the principle of region-cum-industry and in the interest of preventing industrial unrest the Government of India and the managements of the public sector undertakings including BEL should have considered the reasonable demands of the workmen. According to the Unity Forum, whether in terms of the wage policy pursued by the public sector undertakings since 1973 or in terms of 1978 settlement or otherwise the claim of the workmen for an upward revision of wages on par with BHEL with effect from 1-1-1977 was amply justified. The Unity Forum further contended that the management was responsible for prolonged strike and also for prolonging the issue and there was no justification for proclamation of the lock-out. As regards the quantum of monetary benefits and the period for which such quantum is to be paid the Unity Forum made the following suggestions :

- "(i) The existing scales of pay should be restructured by adding Rs. 30 at the minimum and at all stages in each scales.
- (ii) (a) The irreducible minimum DA for Bangalore as on 1-9-1978 should be revised to Rs. 130 as against Rs. 125.
- (b) For the purpose of computation of variable DA, All India Consumer Price Index figures should be adopted instead of local consumer price index.
- (iii) For the existing employees' basic pay should be refixed in the following manner :
 - (a) Add Rs. 30.
 - (b) Add one Increment.
 - (c) Add one more Increment in lieu of next higher stage (To avoid anomalies) and to provide for consequential adjustments benefits.
- (iv) City Compensatory Allowance should be paid at the rate of 6%.
- (v) The Fitment Benefit which is not extended to the employees joining after the date of agreement should be extended to them."

23. The Bharat Electronics Workers Union at Ghaziabad contended that clauses 1.0 and 1.1 in the 1978 settlement indicated that the said settlement was not in full and final settlement of all the claims put forward in the charter of demands but it was a provisional agreement in the nature of interim settlement to be finalised after the settlement in BHEL. The Ghaziabad union further contended that the

Government of India and the Management both went back from their commitments made and obligations undertaken in the 1978 agreement and hence for the implementation of the said agreement the workmen, after the failure of negotiations, resorted to strike which was prolonged due to repressive measures and adamant attitude of the management and the Government of India. The Union further contended that the workmen at Ghaziabad went on strike on January 23rd, 1981 and from February 20th, 1981 to February 24, and abandoned the same on the assurance of the local management that whatever increase in wages and benefits that would be forth coming after the strike at Bangalore the same will be extended to the workmen at Ghaziabad. The Union also adopted other contentions raised by the BEEU in its written statement.

24. Separate Statements of Claim were filed by the Hindustan Aeronautics Limited (Nasik Division Employees Union), Ojhar, the Hindustan Aeronautics Employees' Association, Bangalore, the Hindustan Aeronautics Employees' Association, Sunabeda, the Hindustan Aeronautics Limited Karmachari Sangh, Kanpur, the Hindustan Aeronautics Employees' Union, Lucknow, and the Hindustan Aeronautics Limited Rashtriya Shram Sangathan, Lucknow. The Statement of Claim filed by the Hindustan Aeronautics Employees Association, Sunabeda and the Statement of claim filed by the Hindustan Aeronautics Karmachari Sangh, Kanpur are identical with the common Statement of Claim filed by the Hindustan Aeronautics Employees Association, Bangalore and other four Unions located at Bangalore which is summarised in paragraph 20 above. The contentions in the other statements of Claim are also not in any way different and hence it is not necessary to enumerate them in details.

25. The separate Statement of Claim filed by the Indian Telephone Industries Employees' Union is also not in any way different from the common statement of claim filed by the five Unions. By its separate Statement of Claim, the Indian Telephone Industries Mazdoor Sangh, Allahabad has also raised the same contentions. The Hindustan Machine Tools Head Office Employees' Association which represented the workmen employed in HMT Corporate Head Office, HMT Machine Tools Marketing and its Directorate including HMT Home Office and Research and Development Metal Cutting Centre, HMT Watch Marketing and its Directorate including Electronics Watch Project and Assembly Ancillaries, HMT (International) Limited and HMT Regional Offices and Show-rooms all over the country, and HMT Karmika Sangh, Bangalore also filed their Statements of Claim. The HMT Watch Factory Employees Union, Bangalore and the HMT Horological Machinery Division Employees' Union, Bangalore have filed a common statement of claims. The contentions raised in respect of the dispute referred to for adjudication are not in any way different from those summarised above.

26. In the statement of claim filed on behalf of the management of Bharat Electronic Limited (BEL), Bangalore it is contended that a reading of the re-

ference shows that the dispute is confined to clause 1.1 of the settlement dated 3-9-1978, which has only a limited meaning and has relation only to Basic Pay and Dearness Allowance and hence any other consideration regarding the increase or otherwise of the Wages is beyond the competence of the reference. It is further contended that clause 1.1 of the settlement dated 3-9-1978, is vague and does not confer any monetary benefits on the employees. According to the management, reading of the said clause will show that unless and until the management made necessary modifications in the relevant clauses and consequential adjustments in the settlement in consultation with the Unions, the right to claim higher rate of neutralisation of Dearness Allowance or higher minimum wages did not arise at all and that the alterations made by other Engineering Central Public Sector Undertakings can only be a reason or cause for bringing the parties together again for consultation and to arrive at a decision as to whether any modifications in the relevant clauses of the settlement should be made or not. According to the management, by the said clause it only agreed to consider as to whether any change has to be made at all in the settlement during the currency thereof and it did not give any right to the workmen to claim any monetary benefits. Moreover, there was no consensus ad idem with reference to the Point contained in clause 1.1 of the settlement among the parties and that was precisely the reason why that particular clause was not incorporated in the settlement dated 4-9-1978, signed by the BEL management with BEL Workers' Unity Forum. The BEL Management further contended that clause 1.1 was wholly redundant having regard to the provisions contained in clause 1.0 of the settlement and therefore having regard to the facts and circumstances of the case, there is no industrial dispute existing between the parties and the reference ought to be rejected on that ground alone. According to the BEL management the fact, that in the year 1973 while the Bangalore based public sector undertakings had a minimum wage of Rs. 300—Rs. 305, BHEL had the minimum wage of Rs. 295 only, would show that the minimum wage paid in BHEL was not comparable to what was being paid by BEL. The management further maintained that in fact, there was no parity between the wage structures of BHEL and BEL at any time since the Dearness Allowance in the two undertakings were linked to different indices and could not move together. Even within the BEL Units there was no parity of structure in view of different indices being followed in different units. The management further contended that although at the start of the comparison the Dearness Allowance level at BHEL was more advantageous at Bangalore, the subsequent movement of Dearness Allowance levels had been erratic and from a particular point onwards the D.A. levels based on local index at Bangalore had outstripped the D.A. level based on All India Index and if BHEL parity is to be strictly adopted, recoveries for the excess already paid will have to be made. According to the management, the proper way to look at the problem was to go by the terms of the BEL Settlement which no doubt indicated that if there was increase in BHEL etc. the management would discuss with trade unions for a review and accordingly, such discussions have been subsequently held and the matter has been settled with pay-

ment of an ad-hoc amount of Rs. 700 and an additional ad-hoc payment of Rs. 25 p.m. from 1-1-1981, and hence the question of wage parity with BHEL does not survive any longer. The management further maintained that clause 1.1 in the settlement dated 3-9-1978 was not a condition of service in respect of all the workmen involved in the dispute and hence the workmen cannot claim rights under clause 1.1 as if there was a service condition that whenever the wages of BEL did not compare well with BHEL, the Company was bound to bring the same on with par with the latter. The BEL management further contended that after the strike and lock out in 1980-81, a settlement was entered into between the parties, on 9th June, 1981, which inter-alia settled the issues of wages and Dearness Allowance for the period upto 31-1-1982 and hence those issues cannot be reopened during the pendency of the said settlement and there can be no industrial dispute at all in regard to the items covered by the said settlement during the operation of the same. According to the management, the dispute, if any, in terms of the 1978 settlement stood fully settled as per the settlement of June 1981 and hence the workmen are estopped from raising any dispute after the settlement of 9-6-1981 by invoking any provision of the 1978 settlement dated 3-9-1978. Relying on clause 21 of the 1983 wage settlement, the management contended that if at all the workmen have any claim based on clause 1.1 of the 1978 settlement the claim will have to be limited to period ending with 31-12-1982. The management also disputed the contention that the minimum wage in BHEL was fixed at Rs. 500/- as on 1-9-1978, as per the wage settlement signed in 1980. According to the management, in BHEL the unskilled workmen in the lowest grade are first recruited on daily wages and then after a minimum service of six months are placed on consolidated pay of Rs. 450/- p.m., if found suitable and the wage of Rs. 500/- p.m. comprising of Basic Pay of Rs. 335/- + Dearness Allowance Rs. 165/- is paid only to those unskilled workmen who have completed 1½ years of service on daily wages and consolidated wages, and hence contention of the workmen that the minimum wage in BHEL was Rs. 500/- p.m. is a myth was never a reality. The management claimed that notwithstanding the said position and merely with a view to have good and harmonious relations with the workers the Company agreed to give to the workmen certain benefits under the 1981 settlement and hence nothing more is payable to the workmen than what has been already paid under the 1981 settlement. The management further maintained that the settlement arrived at in June, 1981, as a result of which the Unions accepted Rs. 700/- as lumpsum for the period prior to 1-1-1981 (i.e. for 28 months) and extended the wage settlement upto 31-12-1982, settled all the disputes relating to minimum wages and the statement in the preamble of the 1981 settlement to the effect that 'as a result of further bipartite and tripartite discussions at various levels and taking the totality of circumstances into account and without prejudice to the contention of either party on the issue' was put on only as a face saving clause for the unions in so far as its members were concerned. According to the management

if there was any dispute in reality this provision would have been made in the terms of the settlement and not in the preamble and the fact that it was not incorporated in the same terms of the settlement showed that the Unions themselves gave up their right, if any. The management further contended that the dispute regarding revision of minimum wages or enhancement of the rate of neutralisation of Dearness Allowance could only be referred to the Government and if the Government of India had agreed to higher minimum wage then only it would have been obligatory on the part of the BEL management to make consequent adjustments and in the absence of any such decision by the Government of India, no dispute could arise nor was there any cause for referring a dispute for adjudication on this issue and hence the entire claim of the workmen under clause 1.1 of the 1978 settlement is mis-conceived and unfounded and non-existent in the eye of law. The management further submitted that the provision as contained in clause 1.1 of the settlement of 1978 is not to be found in the settlement of ITI and HMT which fact itself goes to show that clause 1.1 was incorporated without having regard to the facts, or circumstances of the case or to the actual needs of the parties. Clause 1.1 was redundant having regard to the provision contained in clause 1.0 and runs contrary to it. The management further submitted that wages in any industry can have its basis with reference to the capital employed, profits made, capacity to pay, dividends declared etc. and hence merely because at a point of time a settlement was signed by the parties due to circumstances existing then it cannot give a right to the workmen or the Government to make reference which will upset the entire jurisprudence of industrial adjudication. According to the management, the parity in wages with another industry can be maintained only when both the industries have many things in common justifying such a parity. According to the management, pay structure and working activity carried out by BHEL are different from that of BHEL and hence was no justification for making a reference. The management further contended that the Dearness Allowance payable to the workmen employed in BHEL is based on the All India Consumer Price Index whereas the Dearness Allowance applicable to the workmen of BEL at the relevant time was linked with local Consumer Price Index and hence no comparison can be made nor any conclusion can be drawn that the workmen employed in BEL are entitled to higher rate of wage or higher rate of neutralisation of Dearness Allowance. The management further maintained that after the 1983 settlement the BEL management is paying more wages than what BHEL is paying to its employees.

27. The management of Bharat Electronics Limited further maintained that even though there was no justification for the workmen to claim parity with BHEL, the management held consultations with the Unions. Several meetings were held by the management with the Unions and the Government Labour Department also intervened to

impress upon the Unions to settle the issue bilaterally and not to resort to strike. Even before the strike was commenced the management, without prejudice to its rights, had made a reasonable offer to increase the pay of the workmen, subject to certain conditions, and had also agreed to continue the negotiations with the Unions to arrive at a settlement on the issue. But despite this reasonable offer made by the management and the appeal made by the Government Authorities including the Labour Minister, the Unions launched the indefinite strike from 26-12-1980, which was most unjustified. The management further contended that apart from the unjustice of the strike, the strike was also illegal, under the provisions of section 23 of the Industrial Disputes Act, 1974, because at the relevant time, there were various other dispute pending adjudication before the Industrial Tribunal/Labour Court, Bangalore between the workmen and the Management viz. I.D. No. 26/79 Reference No. 142/79 etc. The strike was also illegal because the workmen went on strike during the currency of the settlement. The present dispute itself was pending before the Conciliation Officer. The management claimed that the illegal nature of the strike was made known to the workmen by the management by way of circulars and by other means. But the workmen resorted to illegal strike which stopped the wheels of production for a considerable time and caused huge loss to the Company. According to the management, during the period of strike, the workmen indulged in acts of shouting, picketing, intimidating, assaulting and causing lot of disturbances and prevented many willing workmen from entering the factory. The workmen therefore, are not entitled to any wages for the strike period. The management further contended that although the strike was called off on 15-3-1981, the workmen did not start doing normal work in the Company. But resorted to various acts of intimidation, go-slow, beating up the willing workers who had attended factory during the strike period, other forms of indiscipline, and also resorted to other acts like destroying Company property, making it impossible to run the factory on normal conditions. In substance the strike conditions were continued, from inside the factory withdrawal of normal wages. According to the management, all these atrocities culminated into very serious violent activities inside the factory on 5-5-1981 and the entire work force left the factory during working hours in a concerted action, and hence the management was compelled to declare a lock-out on 5/6-5-1981. The management claimed that this action was taken after giving sufficient notice to the workmen to give them a chance to give normal production and to avoid indiscipline and violence and only when inspite of the best efforts of the management normal conditions could not be brought about in the factory. The management further maintained that it was forced to continue the lock-out till 3-6-1981, in view of the tense atmosphere and in the absence of any assurance forthcoming from the Unions and also in view of the continuance of the illegal strike and that the lock-out was lifted immediately after the Unions assured that they would assist the management in maintaining discipline within the premises and

would contribute to production and called-off of the strike. Therefore, there is no justification at all to consider the claim of the workmen for wages during the lock-out period.

28. The Management of Bharat Electronics Limited filed a counter statement with regard to the claim statement filed by the Union. It is almost identical with the statement of claim summarised above. The management of BEL, Ghaziabad also filed a statement of claim. Further by an application under section 11 of the Industrial Disputes Act, 1947, read with section 151 and read with order 6 Rule 17 of the Civil Procedure Code the management raised an additional plea to the effect that the settlement dated 9-6-1981, is a settlement signed during and in the course of conciliation proceedingss under section 12(3) read with section 18(3) of the Industrial Disputes Act and the said settlement is binding on all workmen and no industrial dispute can be referred for adjudication when such a settlement is still in force.

29. The Statements of claim filed by the managements of Hindustan Aeronautics Limited, the Bharat Earth Movers Limited, the Hindustan Machine Tools Limited and the Indion Telephone Industries Limited are not very much different except the contentions based on the position that in the 1978 settlements in HMT and ITI there is no clause similar to clause 1.1 in the BEL settlement and that ITI, HAL and the Hyderabad Unit of HMT are public utilty services within the meaning of section 22 of the Industrial Disputes Act. There was also no question of justifying the lock-out in HMT because there was none. The ITI management also contended that clauses 6 and 7 of ITI settlement dated 1-9-1978, prohibited an adjudication or, demand by the workmen, in respect of any matter covered by the said settlement and also which would entail any financial commitments by the management.

30. On these pleadings, my learned predecessor (Mr. Justice R. D. Tulpule) framed the following issues :

"Issue No. 1-A.—What are the relevant clauses in the respective agreements/settlements of 1978 in respect of (1) Hindustan Machine Tools, (2) Bharat Earth Movers & Kolar Gold Fields, (3) Indian Telephone Industries, (4) Bharat Electronics Ltd., and (5) Hindustan Aeronautics Ltd.?

Issue No. 1-B.—In view of the respective clauses concerned in the case of the companies set out above, is the contention that the employees are not justified in demanding wage revision so as to bring it on par with the wages of BHEL maintainable or otherwise?

Issue No. 1-C.—Whether the employers or such of them are justified in contending that the respective clauses relate only to the revision of minimum wages and not for wage structure prevailing in the company ?

Issue No. 1-D.—Whether the demand represented by issue/question No. 1 is barred in view of the settlement of June 1981 in respect of each of the companies concerned?

Issue No. 1-E.—Whether the demand is not barred pursuant to the settlement arrived at in each of the companies in September/October, 1973?

Issue No. 1-F.—If the demand is not barred in view of the settlements of September/October, 1983, what is the effect on the retrospectivity of the claim?

Issue No. 1-G.—What is the nature of the settlements of 1978 with regard to their binding character on the workmen? Whether they are—Settlements under Section 2(p) or under S. 18(3)?

Issue No. 2-A.—If issue No. 1 and its sub-issues are answered in favour of the employees, what is the consequence of the settlement in BHEL on the quantum of demand for wage revision and the period for wage revision?

Issue No. 2-B.—If the 'wage structure' has to be revised whether the revision is to be applicable to all the grades? If so, to what extent as to the quantum in respect of each of the grades?

Issue No. 2-C.—If the employees are considered to be entitled to wage revision, what is the date from which the wage revision should be allowed and what retrospectivity granted to the payment and to what extent?

Issue No. 3-A.—Whether the employees in the respective units succeed in showing that they were justified in going on strike with effect from 26th December, 1980? If so, what should be the order regarding relief for the strike period from 26th December, 1980 to 15th March, 1981?

Issue No. 4-A.—Whether the employer companies prove the various acts set out by them in each of the companies written statement as indulged in by the concerned workmen?

Issue No. 4-B.—If issue No. 4-B above is answered in the affirmative, whether the employer concerned was justified in declaring lock-out with effect from May 1981 to June, 1981.

Issue No. 4-C.—Whether the employer-companies were justified in continuing the lock-out from 1981 to June 1981?

Issue No. 4-D.—What should be the relief to the workmen, in case it is held that the lock-out was justified/not justified?"

31. The scope of the reference so far as the question of parity is concerned is not so wide as the parties initially understood it to be. The demand of the

workmen is not for parity with BHEL in pay scales at all levels. They did not seek uniform wage structure in all the five Bangalore based public sector undertakings inter se and with BHEL. Their's was not a demand for a new wage fixation. What they sought in substance was parity with BHEL only in respect of the minimum wage (i.e. Basic Pay and Dearness Allowance), payable to the unskilled workmen of the lowest category and consequent adjustments in the higher scales. According to the workmen, this parity flowed from the above quoted clauses of the 1978 settlements and the demand is based on the said clauses which according to them contemplated modification of the 1978 settlements only for the purpose of bringing the minimum wage on par with the minimum wage fixed in BHEL for the relevant period, negotiations in respect of which were pending when the 1978 settlement were entered into in the five Bangalore based public sector undertakings. There was no question of the workmen making a fresh demand for revision of wage scales during the period of operation of the earlier settlements.

32. According to the management, nothing flowed from the clauses under reference, much less parity with BHEL even in respect of the minimum wage at the lowest level. Great emphasis was placed on behalf of the management in support of this contention on the circumstances that the second clause analogues to clause 1.1 in the BEL settlement dated 3-9-1978, with BEEU does not find place not only in the settlements in ITI and HMT but also in the settlements entered into by BEL management with the Bharat Electronics Workers' Unity Forum and the Union at Ghaziabad. Much was also made of the fact that the wording of the second clause viz. 1.1 in BEL, clause A(x) of the settlement in BEML and clause 5 of the settlement in HAL, is different. It was also contended that the second clause under reference is not only vague but also inconsistent with the first and both these clauses do not contemplate that whatever minimum wage was fixed in BHEL in pursuance to the settlement, negotiations in respect of which were going on when the 1978 settlements were entered into in the five Bangalore based public sector undertakings, must be given to the workmen of these industries. According to the management, no such right was confirmed on the workmen by the said clauses which contemplated merely a fresh dialogue on the question whether any change in the minimum wage was necessary.

33. There is nothing vague in the second clause viz. 1.1 in the BEL Settlement with BEEU dated 3-9-1978, clause A(x) in the BEML Settlement dated 31-8-1978, and clause 5 in HAL settlement of even date, which are reproduced above. In all these clauses there is specific reference to the contingency of revision of the minimum wages in BHEL and to what the parties were expected to do in case minimum wages comprising of Basic Pay and Dearness Allowance or the neutralisation of Dearness Allowance was altered to a higher rate in any other Engineering Central Public Sector Undertaking including BHEL. It would be worth while in this connection to refer to some letters that were exchanged between the management of BEL and the Unity Forum and the BEEU. By the

letter Exh. M-BEL-8 dated 7-6-1980, the President of the Bharat Electronics Workers' Unity Forum invited the attention of the Executive Director and Officiating Managing Director of BEL to clause 7 of the Memorandum of Settlement signed by the BEL management with the Unity Forum in 1978, and stated that according to the said clause benefits if any, given to the employees of any other public sector undertakings should also be given to the employees of BEL. The President of the Unity Forum also referred to the settlement in BHEL and pointed out to the management the difference between the benefits accruing BHEL as per the settlement dated 9-1-1980, and benefits accruing to BEL employees as per the 1978 settlement and maintained that the difference which came to Rs. 108.80 should be paid from 1-1-1977. This letter was replied to by the Deputy General Manager (Personnel) Shri N. P. Manjunatha, by his letter dated 12-6-1980 (Exh. M-BEL-9). It reads as follows :—

"As per Clause 7 of the Memorandum of Settlement the Management has agreed to make necessary modifications to the minimum wages and consequential adjustment in the wage structure in consultation with the Unions in case the Government of India agrees to the improvement in the minimum wages. Therefore, even if BHEL settlement can be taken as an approval for raising the minimum wage, the only items that need discussions would be the minimum wage and the consequential adjustment in the wage and the consequential adjustment in the wage structure and not items like fitment benefits, etc. as claimed in your letter.

In respect of wages of BHEL and other contents of your letter we have the following observations :

- (1) The minimum wage of BHEL is effective from 1-9-1978, and has no bearing on the minimum wage from 1-1-1977.
- (2) The BHEL minimum wage cannot automatically become the minimum wage in BEL since the BHEL wage is linked to All India Consumer Price Indexes while the BEL wage is linked to the local CPI. It is wrong to suggest that the employees on the rolls of BHEL at the minimum of wage scale Group-I as on 1-9-1978 were given a total pay of Rs. 583.60 p. as given by you. We invite reference to Clause 5 of the BHEL settlement according to which this pay would be only Rs. 508.60 p.

These items are explained to you at the meeting we had on 30th May 1979. At this meeting it was also decided that you would discuss the matter with your sister trade union BEEU and request to for a joint meeting with the Unions. We are agreeable for such a joint meeting on 20th or 21st June and you may fix the date in consultation with us."

34. Exhibit M-BEL-11 is a letter addressed by the same Officer to the General Secretary of BEEU on 27-6-1980. This letter was written in reply to the letter of BEEU dated 23-6-1980, requesting the management to furnish necessary working sheet relating to the difference in minimum wages between the BHEL and BEL. This is what the Deputy General Manager (Personnel) stated in the said letter;

"BHEL & BEL started off with a common Minimum Wage of Rs. 300 as on 1-10-1973 with BHEL following All India Consumer Price Index of 227 points and BEL following Bangalore Indices of 241 points. In the new settlement the BHEL has raised the minimum wages to Rs. 500 at an all India Consumer Price Index of 327 points. The Bangalore Indices averages 333 points for the corresponding quarter showing a raise of only 92 points. Therefore the Minimum Wage at Bangalore should be Rs. 500 minus the DA payable for 8 points (100—92) viz. Rs. 10.40 p. This works out to Rs. 489.60 p. As against this figure, what has been agreed to be paid by BEL vide settlement entered into is as follows :

Basic Wage	Rs.	305.00
Dearness Allowance	Rs.	124.80
Fitment benefit for existing employees	Rs.	40.00
Total	Rs.	469.80

Therefore the difference is in no case more than Rs. 19.80 (i.e. Rs. 489.60—Rs. 469.80).

Even the above figure of approximately Rs. 20 will have to be modified by the following conditions imposed by the Government on the BHEL Minimum Wages :

- (a) there has been no increase in HRA payable to BHEL employees whereas BEL has given an increase of Rs. 10 at the minimum;
- (b) the above minimum wages are applicable for the period 1-9-1978 to 31-8-1982; and
- (c) for the period 1-9-1977 to 31-8-1978 ad-hoc amount only has been paid. In view of the above, our view was that there was very little difference between BEL and BHEL requiring any revision of pay structure agreed to."

The letter at Exh. OW-42 (filed as annexure no. 42 to the affidavit of evidence of Shri Michael Fernandes—Witness No. 15 for the workmen) is also very significant. It was addressed by the Chairman and Managing Director of ITI Shri C.S.S. Rao, on 3-6-1980 to the then Minister for Communications Shri C. M. Stephen. In that letter, Shri Rao, among other things, referred to the question of revision of minimum wage in ITI consequent upon the upward revision thereof in BHEL. He stated as follows :

"On the Industrial relations front, while there have been no major issue exclusively between ITI workers and the Management, we have a very important dispute covering all Bangalore based industries which could trigger a major industrial relations crises in ITI and in other industries in Bangalore.

The last wage agreement was signed on 1st September 1978 with effect from 1-1-1977 and the agreement made a proviso with the approval of Govt. that in case of BHEL or any other Indian Public Sector Industries revised their wage structure to give a higher minimum wage and rate of D.A. neutralisation, the Unions would have the right to reopen the wage scales already negotiated to bring it on par with the BHEL etc. BHEL have, in fact, revised their wage scales and minimum wage which would give additional benefits over the Bangalore based industries from a minimum of Rs. 35 to Rs. 100 per months. All the Bangalore based industries Unions have formed a Joint Action Committee and have already demanded that their wage scales be brought on par with that of BHEL.

We have a committee in Bangalore of the Heads of the Public Sector Undertakings called the Consultative Committee for Union Industries of which I am the Chairman for the year. Before the wage revision for BHEL was implemented with the approval of Govt. I had indicated to the BPE in the Ministry of Finance, the possible repercussion in the Bangalore-based Industries. A copy of my letter addressed to the DG, BPE is enclosed herewith.

We have had no reply from the BPE nor any helpful guidance from the Govt. In view of the disparity in wages which has come up with the implementations of the BHEL agreement (and also the Coal India Ltd. agreement) and the stipulations already approved by the Govt. in the agreement for the Bangalore based Industries, we foresee either a compromise settlement or a major confrontation between management and workers.

The wage scales applicable to the Bangalore-based Industries by and large are also applicable to our Units in Rae Bareli, Palghat and Naini etc. The problem has already assumed serious proportions in BEL and HMT and the Union in ITI has been pressing for a dialogue immediately. I understand that the Ministry of Communication have taken this up with the Ministry of Finance, but we have had no specific response or guidelines on the issue. From June onwards, the attendance will improve as also the position of power. It would be unfortunate if our plans for recovery in productivity is to be seriously disrupted on this issue of wage revision in

which the Union and the workers clearly see a commitment on the part of Govt. to match their scales of pay with that of BHEL. (Emphasis supplied)."

It is significant to note in this context that as mentioned above, there was no clause in ITI Settlement dated 30-8-1978, analogous to clause 1.1 in the BEL Settlement with BEEU dated 3-9-1978. This correspondence clearly shows that there was nothing vague in the relevant clauses and the managements were fully aware of the import of those clauses and as to what flowed therefrom.

36. It will also be seen that the clauses in question were incorporated in the 1978 settlements after full discussion and deliberations. It will be seen from the draft of the Minutes of the Meeting (Exh. OW-18) held on 11-4-1978, between the management of ITI and ITI Employees Union, that the management was willing to revise the rate of Dearness Allowance neutralisation rate if the Government agreed to revise the at later date in other major public sector undertakings and was agreeable to incorporate such a clause in the agreement. Reference may also be profitably made to the case made out by the ITI management in respect of wage revision and fringe benefits in the hand-out issued by the management on 20-5-1978, in the wage of the strike notice issued by the ITIEU after expiry on 31-12-1976, of the earlier agreement in respect of wages. In this hand-out while putting its case the management stated as follows :

"However, the ITI Management had considered improvements in the wage scales, with better increment steps, elongation of the scales and other fringe benefits so that these would be on par with the highest pay scales existing among industrial workers in the Public Sector Undertakings. It should be appreciated that any upward revision of emoluments in any public sector undertakings would have its own impact on other Government industries as well as departments and hence neither ITI nor other Bangalore based Public Sector Undertakings could do so without approval at the highest level. The offers now made are based on the Maximum limits approved by the Government who have considered the impact it would on the wage pattern of the entire work-force in the country."

37 The workman produced at Exh. OW-35, the Minutes of the Meeting held on 9-8-1978, between the representatives of the BEL Management and the BEEU of which as mentioned above, Shri Michael Fernandes was the President. In the Meeting the President of the Union referred to the letter sent by the Union to the Management on 8-8-1978, in the wake of the developments that took place after the previous meeting held on 22-2-1978. In that letter, one of the demands was of inclusion of a clause in the agreement that in the event of the higher benefits of wage revision being given workmen of BHEL or any other comparable public sector industry such benefits be extended to ITI employees. The discussion on this question is summarised in paragraph 5 of the Minutes

which also contained the position taken by the management in this behalf. The relevant portion of the Minutes reads as follows :—

"President of the Union stated that BHEL have entered into an agreement wherein the existing employees of BHEL are given 10 per cent, of their pay plus DA as interim relief. The Union and the workers feel that the final settlement which may be arrived at between the BHEL employees and management may result in better monetary benefits than the interim relief. The Union stated that in the event of higher benefits conferred on account of wage revision to the employees of BHEL or any other comparable Public Sector Industries, it may be necessary to review the position in ITI also in order to maintain parity.

CM stated that this should not mean total negotiation of the agreement reached based on comparison of every scale and every benefit. The safe grounds should be limited to certain basic parameters. All monetary benefits including fringe benefits should be considered in its totality for the purpose of comparison. However, CM stated that this request of the Union will be discussed in CCUI. The Government should also agree to this."

38. It will also be seen from the Conciliation Proceedings held on 1-9-1978 (the date of settlement in ITI) between the workmen and the management of ITI, Bangalore regarding the strike notice that the Memorandum of Settlement was signed after detailed discussion before the Commissioner of Labour regarding fringe benefits, preamble of the Settlement to be signed, Dearness Allowance and other issues. It is also pertinent to note that even though no clause analogous to clause 1.1 was incorporated in the ITI Settlement of 1978 it is clearly mentioned in the proceedings of 1-9-1978, that it was further agreed to discuss and clarify any matter arising out of wage to be reached in BHEL.

39. Much cannot be made of the fact that no clause analogous to clause 1.1 in the BEL settlement with the BEEU finds place in the settlements entered into by the BEL Management with the Unity Forum and the Union at Ghaziabad and also in ITI settlement dated 1-9-1978, and the HAL settlement dated 30-8-1978, because it was never disputed that there was parity in the minimum wage payable to the unskilled workman of the lowest category in all the five Bangalore based public sector undertakings. In the 1973 settlement, this parity was achieved by payment of CCA at the rate of 4 1/2 per cent to the workmen of ITI which was linked to All India Consumer Price Index while it was achieved by paying CCA at the rate of 4 per cent to the ITI workmen in the 1978 settlement. It was never the case of the ITI and the HMT Managements that revision of minimum wage if any, consequent upon the revision of the minimum wage in BHEL, was to be effected only in BFL, BEML and HAL and that the ITI and HMT were not expected to follow suit even if the minimum wage was revised

in the other three industries consistent with the upward revision in BHEL. The letter Exh. OW-42 written by Shri C. S. Rao to Shri Stephen on 3-6-1980, (the relevant paragraphs from which are quoted above) clears any doubt on this question. It is pertinent to note that at the marginal time Shri Rao was the Chairman and Managing Director of ITI and also the Chairman of the Consultative Committee for Union Industries formed by the heads of the five public sector undertakings at Bangalore.

40. Shri Manjunatha, stated in paragraph 8 of his affidavit that no clause corresponding to clause 1.1 in the BEL Settlement was incorporated in the settlements in ITI and HMT because those concerns were not parties to the dispute regarding the irreducible Dearness Allowance. This contention is not factually correct. There is clause viz. 2(1) in the ITI settlement dated 1-9-1978 (Exh. M-ITI-3) in respect of irreducible D/A. The demand for fixing irreducible Dearness Allowance was already made by the ITI Employees Union vide letter dated 8-8-1978 (Exh. OW-34) addressed by the Secretary of the said Union to the Chairman of the ITI Limited.

41. There is also no substance in the contention that clause 1.0 and 1.1 (as also the analogues clauses in BEML and HAL Settlements) are conflicting. The first clause gave liberty to the workmen to take up the issues of revision of minimum wages and enhancement of the rate of Dearness Allowance neutralisation with the Govt. and cast obligation on the management Government and cast obligation on the managements to make necessary modifications in the minimum wage and Dearness Allowance neutralisation rate and make consequential adjustments in the wage structure only if the Government of India agreed to improve the minimum wage or the neutralisation rate beyond Rs. 1.30 per point. By this clause the workmen were given liberty to approach the Government any time and the right of approach for revision of minimum wages and enhancement of the Dearness Allowance neutralisation was not made contingent upon upward revision of minimum wages and the enhancement of the rate of neutralisation in other central engineering public sector undertakings such as BHEL, HMT etc. While the first clause gave liberty to the workmen to approach the Government any time, the second clause gave liberty to the workmen to directly approach the concerned managements for modification of the minimum wages and enhancement of the rate of Dearness Allowance neutralisation only in case of upward revision of the minimum wages and the Dearness Allowance neutralisation rate in other central engineering public sector undertakings including BHEL and cast an obligation on the managements to make necessary modification in the relevant clauses of the 1978 settlements. In the contingency contemplated by the second clause it was not necessary for the workmen to approach the Government and they could directly take up the issue with the concerned managements. But they were given this right only if there was upward revision in BHEL or other public sector engineering undertakings and not otherwise.

42. According to the managements, the above referred alternative clause in the 1978 settlements neither contemplated parity with BHEL in respect of minimum wages at the lowest level nor it was possible to

effect such a parity. The contention that BHEL is not a comparable industry was also taken on behalf of the ITI. Shri H.R. Alva, who was working as Chief Personnel & Administration in 1978 and later on as Additional Director (Personnel & Administration) of the ITI Limited and who is presently working as Director (Personnel) of the HMT Limited, tried to say so in paragraph 29 of his affidavit of evidence. This is what he stated:

"I say that at no point of time during negotiations, ITI Management admitted that BHEL is a comparable industry. Further, during the Union-Management Meeting held on 3rd March, 1978 (Minutes Exhibit W-16) Management indicated that the pay structure in ITI is comparable to that of BEL which is a light Engineering/Electronic Industry akin to ITI. The statement contained in Exhibit W-23 also does not support averments of the Union that the Management concurred the views of the Union that BHEL is a comparable industry. I further say that ITI Management had only agreed that if any comparable industries grant improvements in minimum wages or DA neutralisation, the Union will be entitled to take up the issue with the Government of India and if the Government agrees, the Management will make suitable adjustments. The Management never indicated to the Union for securing early clearance of the Agreement that reference to BHEL should not be made in the Agreement and such reference may not be appreciated by the Ministry of Communications. Further, the position is made clear in Exhibit W-36 wherein Management had only agreed to discuss and clarify any matter arising out of wage Settlement to be reached in BHEL."

That this position is clearly an after-thought can be seen from the Minutes of the Meeting (Exhibit OW-2 & Exhibit OW-5) which took place between the ITI Management and the ITI Employees' Union before the 1974 Settlement was entered into. It will be seen from these Minutes that the Union wanted improvement over the BHEL pattern while the management was prepared to offer exactly the same pattern in BHEL. During the discussions, the management stated that if the workman wanted the All India Consumer Price Index they will have to accept exactly the same pattern as in BHEL and the terms will be identical as in BHEL. It is significant to note in this context that the BHEL management and consequently the Government of India who had decisive voice in the matter, had recognised this position while entering into the settlements dated 17/18-9-1973, and 17/18-1-1974 in BHEL. As mentioned above, by clause 7 of the agreement dated 17/18-9-1974 in BHEL. As mentioned above, by clause 7 of the agreement dated 17/18-9-1973, the workmen of BHEL were given right to review the agreement in case negotiations then under way in HMT and HAL yielded a higher total minimum wage within the following 12 months and in pursuance to this clause that by the settlement dated 17/18-1-1974, the minimum wage (Basic Pay

Plus Dearness Allowance) payable to the lowest category of workmen in BHEL was brought on par with the minimum wages payable viz. Rs. 300/- to the workmen in the five Bangalore based public sector undertakings from 1-10-1973. This position was recognised also at the time of 1983 settlement, the details of which are given in paragraph 18 above. There was thus parity under the 1974 settlement. It was also there under the 1983 settlement. It is therefore futile to contend that BHEL is not comparable industry and hence the minimum wages fixed in BHEL cannot be the minimum wage in the five Bangalore based public sector undertakings during the relevant period. There is no earthly reason why there should not be any parity during the period covered by the 1978 settlements.

43. Even though Shri Majunatha, denied the suggestion that since 1973, it was the policy of the Government that the wages payable to the workers belonging to the lowest category should be uniform as far as possible he admitted that in the 1973 settlements there was such uniformity in all the five undertakings and in BHEL and that the Government of India had approved of this policy of uniformity. He also admitted that in the 1978 settlement there was no such uniformity at the minimum level between the five undertakings on the one hand and BHEL on the other because the BHEL Settlement was arrived at in 1980. He also categorically admitted that after the 1980 settlement in BHEL the five undertakings should have brought the minimum wage on par with BHEL as contemplated by clauses 1.0 and 1.1 in Exh. M-BEL-3.

44. Some capital was sought to be made of the variance in the wording of clause 1.1 in the BEL settlement with the BEFU dated 3-9-1978, of clause A(x) in BEML settlement and clause 5 in the HAL settlement. While clause 1.1 mentioned that the management of BEL agreed to make necessary modifications in the relevant clauses and consequent adjustments in consultation with the Unions, in the event of the minimum wages being altered to higher rate in other engineering central public sector undertakings such as BHEL etc. clause A(x) contemplated bilateral negotiations in such a contingency and clause 5 of HAL agreement stated that the management was agreeable to review the corresponding provisions of the 1978 settlement. All these clauses mentioned the commitment on the part of the management to make consequential adjustments in consultation with the Unions on the basis of the action taken by the managements in pursuance to the upward revision of minimum wages in BHEL. There could not have been any question of consequential adjustments if no upward revision of the minimum wages consequential upon the upward revision in BHEL was contemplated by these clauses. The real intention of the parties in incorporating these clauses was to effect revision of minimum wages in the five Bangalore based public sector undertakings consequent upon upward revision of minimum wages in BHEL, negotiations in respect of wage revision in which were going on when the 1978 settlements were entered into by these five managements. The object was to achieve parity and the letters Exh. M-BEL-9, Exh. M-BEL-11, and Exh. OW-42 and the minutes referred to above, clearly

show that the managements also understood the clauses in the same sense.

45. Shri Manjunatha has stated in paragraph 15 to 18 of his affidavit of the evidence the reasons why it was not possible to accede to the demand of parity and to fix the minimum wages (Basic Pay + Dearness Allowance) in BEL as well as in other four public sector undertakings at Rs. 500 as was done in BHEL by the settlement dated 8/9-1-1980 which was given effect to from 1-9-1978. In his cross examination however, he has stated that the main reason for not adopting Rs. 500 as the minimum wage for the lowest category at the time of 1978 settlement was that the Dearness Allowance was linked with Local Consumer Price Index which differed from center to center. It is however pertinent to note that even at the time of 1973 settlements, the Dearness Allowance was linked with Local Consumer Price Index in BEL, BEML, HAL & HMT and in 1978, the Dearness Allowance in ITI and BHEL was linked with All India Consumer Price Index. Inspite of this there was uniformity in all the five Bangalore based public sector undertakings and in BHEL under the 1973 settlement. The minimum wage was fixed at Rs. 300 and it was for the purpose of bringing about this uniformity in the minimum wage that Rs. 9 were paid to the workmen of ITI as CCA at the rate of 4 1/2 per cent of the basic wage which was fixed at Rs. 200. The Dearness Allowance in other four undertakings which were linked with Local Consumer Price Index was fixed at Rs. 100. But on the material date on the basis of the All India Consumer Price Index the Dearness Allowance payable to the ITI workmen came to Rs. 91 and hence in order to make good that difference the amount of Rs. 9 was paid to the ITI workmen as CCA. Shri K.D. Mukundan, the Additional General Manager (Services & Coordination) HAL, Bangalore Complex, has categorically admitted in his cross examination that CCA was paid to the ITI workmen in order to ensure that those workmen got the same amount by way of Dearness Allowance and CCA as payable to the employees of the four other industries. Shri H.R. Alva, who was, as mentioned above, working with the ITI at the material time has also admitted that the CCA payable to the ITI employees under the 1973 settlements was part of the D.A. It is also pertinent to note that the basis of point to point fixation of pay was adopted in 1969 and 1973 settlements. It is also an admitted position that at the time of 1978 settlements the Unions had demanded that this formula should be continued to be adopted but the managements did not accept the demand and slab basis of Dearness Allowance and point-to-point fixation of Dearness Allowance were given up in the 1978 settlements. There is substance in the contention that these were given up in order to fall in line with the BHEL pattern. There is therefore no substance in the contention that because the Dearness Allowance in BEL, BEML, HAL and HMT was linked with Local Consumer Price Index while ITI and BHEL were linked with All India Consumer Price Index uniformity could not be achieved in the minimum wage.

46. It was sought to be urged on behalf of the management that though the settlement dated 8/9-1-1980, fixed the minimum wages (Basic Pay +

Dearness Allowance in BHEL at Rs. 500 in fact, that was not the minimum wage of the lowest category of workmen in BHEL and that such a workman got the minimum wage of Rs. 500 only after completion of 1½ years of service. In support of this contention reliance is sought to be placed in the circular (Exh. M-BEL-56) dated 25-11-1980, issued by the management of BHEL on 25-1-1980. The subject of the circular was Regulation of Salary of the Employees appointed on Daily rated/NMR basis. By this circular the existing practices relating to the remuneration and eligibility for being considered for absorption in regular grades of employees initially recruited on NMR/Daily rated basis against regular vacancies in the unskilled/semi-skilled and in the lowest skilled was reviewed, and it was decided to regulate the memo on a uniform basis in all the Divisions and Establishments of BHEL as per the guidelines laid down in the circular. Guideline number 1.1 on which special emphasis was laid on behalf of the managements reads as follows :

“1.1 As at present, the employees at the unskilled level will continue to be recruited on daily wages at the scheduled rates applicable from time to time and at per the approved specifications. They will be screened after a minimum service of six months on daily rated basis and on being found suitable will be placed on a consolidated wage of Rs. 450/- p.m. They will be eligible for consideration for appointment to the regular grade after a minimum period of one year service on consolidated wage of Rs. 450/- p.m.”

This circular however will not be of any avail to the managements concerned in this reference because by the BHEL settlement dated 8/9-1-1980, the minimum wage payable to the workman of the lowest category, at the commencement of his employment was specifically fixed at Rs. 500/- . In view of this the circular is irrelevant so far as the present dispute is concerned. In view of the specific provision in the settlement the legality of the circular is also open to challenge. But the question of legality of the action of the management of BHEL cannot be considered in this reference because BHEL is not a party to this reference. The managements concerned in this dispute therefore would not be entitled to rely upon any circular which is prima-facie inconsistent with the clear provisions of the settlement.

47. Some attempt was made on behalf of the management to show that even on 1-9-1978, the date from which the minimum wage in BHEL was revised to Rs. 500/- the minimum wages payable under the 1978 settlement to the employees of the five Bangalore based public sector undertakings were more than Rs. 500/- in several locations of those industries and that if the demands made by the Unions were concerned the minimum wages payable to the workmen to these five undertakings would have been much higher than payable in BHEL under the settlement dated 8/9-1-1980. To illustrate this point Shri Manjunatha gave some calculations in paragraph 15(f) and 18 of his affidavit

of evidence. As rightly contended on behalf of the workmen the calculations are misleading because while calculating the minimum wages paid in the five Bangalore based public sector undertakings under the 1978 settlement the fitment benefit, HRA and CCA have been taken into consideration ignoring the fact that the minimum wages of Rs. 500/- in BHEL do not include the amounts payable by way of Fitment benefit, HRA and CCA. Excluding these benefits the position as on 1-7-1981, was that while in BHEL the minimum wages (Basic Pay + Dearness Allowance) amounted to Rs. 623.50 it was Rs. 596.20 p.m. in HMT, HAL BEL, BEML units at Bangalore and Rs. 549.30 p.m. in ITI (including Rs. 12.20 as CCA) at 4% payable under the 1978 settlement to make good the difference on account of ITI being linked with All India Consumer Price Index. It must be remembered that while comparing the minimum wage the comparison has to be restricted to the basic pay and Dearness Allowance. Other benefits cannot be taken into consideration for the purpose of introducing uniformity in the minimum wage. Hence whatever additional benefits might have been given to the workmen of the five Bangalore based public sector undertakings by the 1978 settlements those cannot be taken into consideration while ensuring benefits were not given for the purpose of making good the difference between the minimum wage payable to the workmen of five Bangalore based public sector undertakings under the 1978 settlements and the minimum wages payable to the workmen of BHEL by the 8/9-1-1980, settlement because the settlement in BHEL was not finalised when the 1978 settlements were entered into by the five undertakings and it was not known as to how much minimum wage would be payable to the BHEL workmen in view of the contemplated wage revision. The settlement in BHEL, which was under negotiations when the 1978 settlements were entered into by the five managements was finalised in January 1980, giving retrospective effect to the upward revision in the minimum wages. Hence even assuming that any additional benefits were conferred on the workmen of the five Bangalore based public sector undertakings by the 1978 settlements those benefits cannot be taken into consideration for the purpose of effecting parity in minimum wage with BHEL.

48. It is the case of the management that even assuming that the above referred clauses in the 1979 settlements gave right to the workmen to claim upward revision of the minimum wage consistent with the upward revision of minimum wage in BHEL, the dispute if any, in that behalf was finally settled by the settlement dated 9-6-1981, which was a settlement under section 12(3) of the Industrial Disputes Act, 1947, and as such binding on all the workmen of the five Bangalore based public sector undertakings. According to the management, the settlement dated 9-6-1981, completely settled the dispute and operates as a bar to the present reference. As against this it is the case of the workmen, that the settlement dated 9-6-1981, was not entered into during the course of the Conciliation Proceedings, that it did not finally settle the dispute in respect of the demands made by the

workmen and that the settlement was without prejudice to the right of the workmen to enforce the relevant clauses in the 1978 settlements and to claim parity in minimum wages with BHEL.

49. Section 2(p) of the Industrial Disputes Act, 1974, defines "Settlement" to mean a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer. By virtue of section 18(3) of the Industrial Disputes Act, 1947, the settlement arrived at in the course of conciliation proceedings is binding not only on all parties to the dispute but also on all persons who are employed in the establishment or part of the establishment, as the case may be to which the dispute relates, on the date of the dispute and all persons who subsequently become employees in that establishment or part. The settlement under section 2(p) will have such binding effect only if it is arrived at in the course of conciliation proceedingss. But every agreement arrived at between the parties during the time when the onciliation proceedings are pending is not necessarily a settlement arrived at in the course of conciliation proceedings. Only a settlement reached during the course of conciliation proceedings which is arrived at with the concurrence and assistance of the conciliation officer and which is considered by him to be reasonable can be said to be a settlement arrived at in the course of conciliation proceedings.

50. The question as to what is meant by the words 'in the course of conciliation proceedings' appearing in section 18 of the Industrial Disputes Act, 1947, was posed before the Supreme Court in the case of Bata Shoe Company (Private) Ltd. and Ganguly (D.N.) and others (1961—1 LLJ—Page 303). Analysing the phrase in the context of duties cast on the Conciliation Officer by section 12 of Industrial Disputes Act, 1947, their Lordships held as follows :—

"One thing is clear that these words refer to the duration when the conciliation proceedings are pending and it may be accepted that the conciliation proceedings with respect to these dismissals, which began sometime before 1 May, 1954, were certainly pending upto 6 September, 1954, bc a little later, as is clear from the two letters of the Labour Commissioner. But do these words mean that any agreement arrived at between the parties during this period would be binding under Section 18 of the Act? Or do they mean that a settlement arrived at in the course of conciliation proceedings postulates that that settlement should have been arrived at between the parties with the

concurrence of the conciliation officer ? As we read this provision we feel that the legislature when it made a settlement reached during the course of conciliation proceedings binding not only on the parties thereto but also on all present and future workmen intended that such settlement was arrived at with the assistance of the conciliation officer and was considered by him to be reasonable and therefore had his concurrence. Section 12 of the Act prescribes duties of the conciliation officer and provides that the conciliation officer shall for the purpose of bringing about settlement of the dispute without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he may think fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute (Vide S. 12(2)). Then comes S.12(3) which provides,

"If a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute."

Reading these two provisions alongwith S. 18 of the Act, it seems to us clear beyond doubt that a settlement which is made binding under S. 18 on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the conciliation officer, for it is the duty of the conciliation officer to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute. It is only such a settlement which is arrived at while conciliation proceedings are pending that can be binding under S. 18."

51. While considering the question whether the settlement dated 9-6-1981, was arrived at in the course of conciliation proceedings, it will be worth while to make mention of the background of the said settlement and the circumstances in which it was entered into. As mentioned above, the Joint Action Front formed by the negotiating Unions made a demand on 12-9-1980, in respect of the implementation of the controversial clauses in the 1978 settlements and claiming revision of minimum wage consequent upon the minimum wage fixed in BHEL by the settlement dated 8/9-1-1980. Only the management of BEL replied to the demand notice while the other managements ignored it. Further inspite of the strike notices no conciliation proceedings were commenced till last week of November, 1980. These conciliation proceedings came to an end on 5-2-1981, when the conciliation officer viz. State Labour Commissioner submitted his failure report to the Government of Karnataka, recommending reference of the dispute for adjudication. The report made by the State Labour Commissioner

in case of BEL is dated 5-2-1981, and it is produced at Exh. FW-23. Similar reports were made in case of the other four undertakings. Admittedly, fresh conciliation proceedings were commenced from 16-5-1981 after the lock-out. Notices in respect of these proceedings were issued on 12-5-1981, to the managements of BEML, BEL, ITI & HAL. The notice issued to the management of BEML is at Exh. M-BEML-39/6, the notice issued to the management of BEL is at Exh. M-BEL-61, the notice issued to the management of ITI is at Exh. M-ITI-34, and the notice issued to the HAL management is at Exh. M-HAL-82. All these notices were issued under section 12(1) of the Industrial Disputes Act, 1947, and these notices mentioned the subject matter of the proposed conciliation proceedings as the lock-out. No notice was issued to the management of HMT because there was no lock-out in any of the Units of the said undertaking. It will also be seen from the Minutes of the proceedings held on 9-6-1981, that the proceedings were conciliation proceedings. The notice in respect of these proceedings was issued to BEL management on 9-6-1981, it is at Exh.M-BEL-57. The notice issued to BEML management is at Exh.M-BEML-39/7, and the notice issued to HAL management is at Exh-M-HAL-83. Even in these notices except the notice to the BEL management (Exh.M-BEL-57) the subject matter mentioned was the dispute about the alleged lock-out. In the notice to the BEL management the dispute was not specified and the subject was mentioned as industrial dispute between the management and workmen in BEL, Bangalore. On this factual position it was contended on behalf of the workmen that no conciliation proceedings were pending in respect of the demand notice dated 12-9-1980, and in view of the failure report already submitted by the State Labour Commissioner there could not have been any conciliation proceedings in respect of that dispute. It was also contended that the conciliation proceedings after 16-5-1981, were restricted to the dispute about the lock-out and hence the settlement dated 9-6-1981, cannot be said to have been arrived at in the course of conciliation proceedings. It is difficult to accept these submissions because the earlier failure report did not make the conciliation officer functus officio and it was open for him to re-open the conciliation proceedings in respect of the demands dated 12-9-1980, inspite of his earlier failure report. Moreover, simply because in the notice the subject matter was mentioned as lock-out it cannot be said that the settlement dated 9-6-1981, could not have been arrived at during the said conciliation proceedings, and hence cannot be said to have been arrived at in the course of conciliation proceedings. The settlement to be one in the course of conciliation proceedings need not be restricted only to the dispute, for resolution of which, the conciliation proceedings are commenced. In the conciliation proceedings held for resolution of one dispute all outstanding disputes between the parties can be settled and such a settlement can validly be considered as one arrived at in the course of conciliation proceedings inspite of the fact that the notice of conciliation is restricted only to one dispute and that the purpose of commencing the conciliation proceedings was to resolve that dispute only. This position can be spelt out from sub-section (2) of section 12 of the Industrial Disputes Act, 1947, which casts a

duty on the conciliation officer not only to investigate the dispute in respect of which the notice is given under section 12 (1) but also to investigate all matters affecting the merits of that dispute and the right settlement thereon. The opening clause of sub-section (3) of section 12 viz. that 'if the settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings' also indicates this position. Needless it is to say that while investigating the dispute about the lock-out the conciliation officer was not only expected to, but bound, to investigate into the causes and the dispute or disputes which lead to the lock-out and to make efforts for right settlement of all such disputes while resolving the dispute about the lock-out.

52. The settlement dated 9-6-1981, in BEL is at Exh.M-BEL-5. It is in Form 'H' as contemplated by Rule 59(1) of the Industrial Disputes (Karnataka) Rules 1957, and it is signed by the representatives of the management and the representatives of the BEEU and BEWUF, as contemplated by clauses (a) and (b) respectively of sub-rule 2 of Rule 59, before the Commissioner of Labour and State Conciliation Officer. The Memorandum of Settlement in ITI is at Exh.M-ITI-12, while the Memorandum of Settlement in HAL is at Exh.M-HAL-4(15). In the title of all these settlements it is mentioned that it is a Memorandum of Settlement under section 12(3) and section 18(3) of the Industrial Disputes Act, read with Rule 59 of the Industrial Disputes Act, (Karnataka) Rules 1957. It is not disputed that the settlements in BEML and HMT are in the same form, are similarly signed and that except variance in some clauses of the preamble consequential to the difference in particulars of events and names of the negotiating parties, all these settlements are almost identically worded and as quoted above, the last clause of the preamble and the terms of the Settlement are identical.

53. It is however pertinent to note that the terms of the settlement were negotiated and agreed upon in the discussions which are representatives of the workmen had with Shri Stephen, the then Minister for communications of the Government of India and that the draft of the final settlement was modified thrice before it was finalised. It was therefore contended that the terms of the settlement were finalised in bilateral discussions between the representatives of workmen and the representatives of the management before 9-6-1981, and the Conciliation Officer did not play any part in bringing about the settlement. According to the workmen, signing of the settlement in the presence of the Conciliation Officer was only a formality.

54. The question whether the Conciliation Officer played any active role in bringing about the settlement and whether he discharged the duty cast upon him by sub-section 2 of section 12 is a question of fact and cannot be decided in the absence of any pleadings. As mentioned above, by an amendment of their statements of claims the managements raised the contention that the settlement dated 9-6-1981, was one under section 12(3) of the Industrial Disputes Act, that it settled the dispute in respect of the demands made by the Unions on 12-9-1980, that the dispute

therefore did not survive and hence the present references barred. The workman did not specifically plead that the settlement dated 9-6-1981, was not arrived at in the course of Conciliation Proceedings because the Conciliation Officer did not do what he was expected to do by virtue of section 12(2) of the Industrial Disputes Act, for the purpose of bringing about the said settlement. In the absence of any such pleadings the managements were deprived of an opportunity to lead evidence to show that the Conciliation Officer did investigate the dispute and did all such things necessary for the purpose of inducing parties to arrive at a fair and amicable settlement of the dispute. No doubt, the terms were settled and the draft was finalised in the discussions which the workmen's representatives had with Shri Stephen at Bangalore at the end of May 1981. It is also true that the workmen gave assurance of Co-operation with the managements and the lock-out was lifted even before 9-6-1981. But in the absence of any evidence, which the parties were not expected to lead in the absence of specific pleadings, it cannot be said that the Conciliation Officer was not present at the time of the discussions which the workmen's representatives had with Shri Stephen or that he did not take any part in bringing about the amicable settlement. Shri Fernandes has not asserted that the Conciliation Officer viz. the State Labour Commissioner was not present during the discussions with Shri Stephen or that he did not take any active part in the discussions.

55. Moreover, there is some evidence to show that the Conciliation Officer had not abdicated his functions. It is an admitted position that during the discussions which the workmen's representatives had with Shri Stephen at Bangalore on 27 and 29-5-1981, the minister made two alternative proposals. These proposals are referred to in the letter Exh. OW-79 dated 30-5-1981, by which the General Secretary of the ITI Employees Union informed the Chairman and the Managing Director that for the reasons mentioned in the letter the Union would require two days time to take final decision as which of the two proposals should be accepted. It appears that there was some variance in the draft proposals given by the Managements on 29-5-1981, and the revised draft proposals given by the managements on 30-5-1981 the latter, according to the workmen were againsts the assurances given by Shri Stephen and the terms spelt out by him on 29-5-1981. This divergence was brought to the notice of Shri Stephen by the Office bearers of the Joint Action Front of the Bangalore based public sector industries unions vide Exh.OW-81 dated 6-6-1981, the last two paragraphs of which recorded the role played by the Labour Commissioner to rectify the anomaly. In the last paragraph the office bearers of the Joint Action Front specifically stated that their continued efforts through the Labour Commissioner to rectify the anomaly did not yield only satisfactory results thus preventing them from signing the settlement. The letter also refers to the assurance given by the Minister Shri Stephen that the legal aspect of the presentation of the proposals could be taken care of when the draft was taken for finalisation before the Regional Labour Commissioner before reaching the tripartite settlement.

56. Shri Swethadri, the then President of the BEL Mazdoor Sangh objected to the signing of the settlement on the ground that the Mazdoor Sangh always considered the problem as one of the implementation of the clauses of 1978 settlements and not one of fresh demand and hence no settlement can be recorded under section 12(3) of the Industrial Disputes Act, taking away the rights of the workers under clause 1.1 of the agreement dated 3-9-1978. The Conciliation Officer viz. the Labour Commissioner over-ruled the objection holding that the postponing the signing of the settlement will only delay the benefits reaching the workmen. He also specifically stated that he was convinced that the settlement was fair and reasonable one and was in the genuine interest of the workmen and hence the settlement was being signed under section 12(3) of the Industrial Disputes Act, 1947. Shri Swethadri has also admitted in his cross examination that the meeting held on 9-6-1981, was a Conciliation Meeting. His position was also categorically admitted by the Bharat Electronics Workers' Union, which did not sign the settlement dated 9-6-1981, in the letter Exh. NW-2 dated 17-5-1982, addressed to the Commissioner of Labour on 17-5-1982. The General Secretary of the Union specifically stated in the letter that the last meeting in respect of implementation of clause 1.1 of the settlement of 3-9-1978, was held on 9-6-1981, that the draft settlement was given to the Unions in that meeting and subsequently settlement was entered into between the management of BEL and some of the Unions. It is therefore, futile to contend that the settlement dated 9-6-81, was not arrived at in the course of conciliation proceedings.

57. It was contended that the settlement dated 9-6-1981, in BEL cannot be considered as one under section 12(3) of the Industrial Disputes Act because the Bharat Electronics Workers' Union and the Bharat Electronics Mazdoor Sangh did not sign the said settlement. The Mazdoor Sangh claimed that it was a majority union in BEL and hence no valid settlement under section 12(3) could be arrived at without its concurrence. The claim of the Mazdoor Sangh that it was a majority union at the material time is seriously disputed by the Bharat Electronics Employees' Union (BEEU) which admittedly was a negotiating union and was one of the constituents of the Joint Action Front. Moreover, the fact that some of the Unions who participated in the conciliation proceedings did not sign the settlement would have no bearing on the question whether the settlement was arrived at in the course of conciliation proceedings or not. A settlement which is arrived at in the course of conciliation proceedings does not cease to be so, simple because some of the participating unions did not sign the settlement. If the settlement satisfied all other requirements of law necessary for making it one arrived at in the course of conciliation proceedings it would not cease to be so even if only some of the participating unions signed the settlement. Not only that but such a settlement would bind not only the members of the Union which signed the settlement but all the workmen employed in the establishment even though they belong to the rival Union which refused to sign the settlement. This position flows from section 18 of the Industrial Disputes Act, which gives

an extended operation to the settlement arrived at in the course of conciliation proceedings.

58. An almost identical question fell for the consideration of Their Lordships of the Supreme Court in the case of M/s Rammagar Cane and Sugar Company Ltd. V/s. Jatin Chakravorthy and others (1961—1 LLJ—Page 244 = AIR 1960—SC—Page 1012). In that case after analysing the scheme of the Industrial Disputes Act, Their Lordship observed as follows :

"It is now well-settled that an industrial dispute can be raised in regard to any matter only when it is sponsored by a body of workmen acting through a union or otherwise. When an industrial dispute is thus raised and is decided either by settlement or by an award, the scope and effect of its operation 18(1) provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement; whereas S. 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in cl. (a), (b), (c) and (d) of sub-sec. (3). Section 18(3)(d) makes it clear that, where a party referred to in Cl. (a) or (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part, would be bound by the settlement. In other words, there can be no doubt that the settlement arrived at between the appellant and the Employee's Union during the course of conciliation proceedings on 25th February 1954, would bind not only the members of the said union but all workmen employed in the establishment of the appellant at that date. That inevitably means that the respondents would be bound by the said settlement even though they may belong to the rival union. In order to bind the workmen it is not necessary to show that the said workmen belong to the union which was a party to the dispute before the conciliator. The whole policy of S. 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings and that the object with which the four categories of persons bound by such settlement are specified in S. 18, sub-sec. (3). In this connection we may refer to two recent decisions of this Court where similar questions under sec. 19(6) and 33(1)(a) of the Act have been considered (vide the Associated Cement Companies Ltd. Probander v. their workmen and others (1960—1 LLJ—491) and New India Motors (Private) Ltd. V. K. T. Morris (1960—1 LLJ—551))."

This decision was followed by the Supreme Court in the case M/s. Tata Chemicals Ltd. V/s. The workmen employed under M/s. Tata Chemicals Ltd. (1978 Lab. I.C. 637)

59. The material question however is whether the settlement dated 9-6-1981, settled the dispute and thus barred the present reference. It is contended on behalf of the managements that the dispute raised by the demand notice dated 12-9-1980, was completely settled by the settlement dated 9-6-1981. As mentioned above, Shri Stephen the then minister for communications had made two alternatives proposals in the discussions he had with the representatives of the workmen on 26 and 29-5-1981. The two proposals, as mentioned in the letter Exh. OW-79, were as follows :—

- “1. Without prejudice to the contentions of either party in regard to the demand raised by the Union in its letter date 12-9-1980 the subsisting settlement due to expire on 30-6-1981, be extended by 18 months ; payment of Rs. 700/- as lumpsum and Rs. 25/- per month with effect from 1-1-1981 :
2. Termination by mutual consent of the settlement due to expire on 30-6-1981, without insisting on notice from either side ; submission by the Union of a Charter of Demands for a long term agreement to be effective from 1-7-1981 ; pending negotiations on this Charter of Demands, payment of interim relief in the form of lumpsum payment of Rs. 700/- and monthly payment of Rs. 25/- with effect from 1-1-1981, the interim payment as above being adjustable against the new agreement to be arrived at.”

Admittedly, the workmen accepted the first alternative. It was therefore contended on behalf of the management that the conduct of the Unions in accepting the first proposal clearly shows that the Unions wanted that the issue should be settled once for all. It is difficult to accept this contention. From the wording of the first proposal it cannot be said that the proposal contemplated final settlement of the dispute once for all. On the contrary, it conveyed exactly the opposite meaning. The proposal contemplated that the settlement due to expire on 30-6-1981, was to be extended by 18 months and that the workmen were to be paid a lumpsum of Rs. 700/- and Rs. 25/- with effect from 1-1-1981, without prejudice to the contentions of either party in regard to the demand raised by the Union in its letter dated 12-9-1980.

60. The settlement dated 9-6-1981, also contains a clause which conveys the same sense and same intention of the parties. The clause which is identical in all the five settlements dated 9-6-1981, is already quoted above. For the purpose of context I would prefer to quote it again. The said clause as it appears in paragraph 6 of the BEL settlement dated 9-6-1981, is as follows :

“As a result of Bipartite and Tripartite discussions and taking the totality of circumstances into account and without prejudice to the

contentions of either party on the issue referred to at paragraph 2 above the following settlement now been arrived at.....”

Paragraph 2 of the settlement which is referred to in the above quoted clause reads as follows :

- “2.1 Subsequently, the BEEU submitted a Charter of demands vide their letter No. GRS|ED| MSM|80 dated 12-09-80, invoking clause 1.1 of the 03rd September, 1978 settlement.
- 2.2 The BEWUF submitted a Charter of Demands vide their letter No. COR|GEN|WN| 80-81 dated 15-09-80, invoking clause 7-9 of the 04th September 1978 settlement.
- 2.3 The BELMS, the BEKA and the Bharat Electronics Workers' Union (BEWU)—which had been registered subsequent to the settlements mentioned in para 1 above) had separately demanded implementation of the Clauses of the 03rd September 1978 settlement.”

In paragraph 1 reference is made to the 1978 settlements entered into by the BEL management with the different Unions of the workmen in the said undertaking. The relevant paragraphs in the other four settlements are almost identical. A plain reading of the above clause leaves no-doubt that the settlement which followed was arrived at without prejudice to the contentions of either party in respect of the demands made by the Unions on 12-9-1980.

61. It was contended on behalf of the management that as stated by Shri Manjunatha, paragraph 6 of the BEL Settlement and similar clauses in the other settlements were face saving devices incorporated at the instance of the Unions and that they neither govern the terms of the settlement nor kept the dispute alive. It was also contended that as in previous settlements the clause is not incorporated in the terms of the settlement. In this context reference was made to the earlier settlement in which whenever any particular demand was left open, specific averments to that effect were incorporated in the terms of the settlement itself. It was contended that if really the demands made by the workmen by the demand notice dated 12-9-1980, were not settled by the 9-6-1981 settlement a term to that effect would have been incorporated in that settlement instead of incorporating a clause in the preamble. It is difficult to accept this submission because it is specifically mentioned that the terms of the settlement were arrived at as a result of bipartite and tripartite discussions and taking the totality of the circumstances into account and also without prejudice to the contentions of either party. The clause “without prejudice to the contentions of the either party” was completely consistent with the first proposal made by Shri Stephen

62. It was also contended that “without prejudice to the contentions” is no the same thing as “without prejudice to the rights” and that the clause “without without prejudice to the rights” was evidently not incorporated in the settlement and it is because of the refusal of the management to incorporate such a

clause that the Mazdoor Sangh refused to sign the settlement. According to the management, though the workmen did not give up their contentions in respect of the interpretation of the controversial clauses in the 1978 settlement and the benefits flowing from those clauses, they gave up their right in respect of the benefits flowing from those clauses. There is no justification for this violence to the language, in which the clause is worded.

63. Black's law dictionary (Page 1437—5th Edition—1978) has given the meaning of 'without prejudice' as follows.—

"Where an officer or admission is made "without prejudice" or a motion is denied or a suit dismissed "without prejudice" it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided. The words "without prejudice" import into any transaction that the parties have agreed that as between themselves the receipt of money by one and its payment by the other shall not of themselves have any legal effect on the rights of the parties, but they shall be open to settlement by legal controversy as if the money had not been paid. In re Bell, 334 pa. 223, 25-A, 2d 344, 350."

64. Equally unsustainable is the contention that the settlement itself, especially term number 4, does not show that the question of parity was kept open. No doubt, clause 4 contemplated that except what was incorporated in terms 1 to 3 other terms and conditions relating to pay, allowances and other monetary benefits in the terms of the 1978 settlement were to be continued till 31-12-1988, the period upto which the earlier settlement was extended by term number 1. But this term as all other terms, was subject to the general clause in the last paragraph of the preamble that the terms of the settlement were without prejudice to the contentions of either party in respect of the demands of the workmen for parity with BHEL on the basis of the relevant clauses in the 1978 settlements. The terms of 9-6-1981, settlement not only do not show that the dispute for which the workmen went on strike was not settled but they clearly indicate that the entire dispute was kept open and an interim arrangement was arrived at and ad-hoc payment made till the dispute was finally settled.

65. An attempt was made to show that the lumpsum payment of Rs. 700 and payments of Rs. 25 per month from 1-1-1981, onwards represented the increase in the minimum wage from 1-9-1978. The lumpsum payment of Rs. 700 represented an increase of Rs. 25 per month for the period of 28 months from 1-9-1978 to 31-12-1980. If that would have been so it would have been clearly stated in the settlement that the minimum wage was increased from Rs. 430 to Rs. 455 with effect from 1-9-1978. It would have also been mentioned whether it represented an increase in the basic pay or in DA or partly in basic wage and partly in DA. The settlement also would have been in the form in which wage settlements are worded.

66. There is also great force in the submission made on behalf of the workmen that the ad-hoc payments made under terms 2 and 3 of the settlement dated 9-6-1981, were consideration for extending the period of the 1978 settlement from 30-6-1981 to 31-12-1982. The submission deserves to be accepted for two reasons. Firstly if the payment of Rs. 700 represented increase in the minimum wage from 1-9-1978 at the rate of Rs. 25 per month then the workmen who were in service on 1-9-1978, would have been paid at the rate of Rs. 25 per month during the period they were in service from 1-9-1978 to 9-6-1981. As per the settlement dated 9-6-1981, the payment of Rs. 700 was to be made only to those workmen who were in service on 9-6-1981. If the lumpsum payment of Rs. 700 really represented increase in minimum wage from 1-9-1978 to 31-12-80 there was no justification for making the payment only to those employees who were in service of the undertaking on the date of the settlement viz. 9-6-1981. The payment was restricted to those employees obviously because they were the persons who were to be affected by the extension. Moreover, a workman who joined the undertaking even a day prior to 9-6-1981, was entitled to get the lumpsum payment of Rs. 700. This is clearly inconsistent with the theory that the payment of Rs. 700 represented ad-hoc increase in the minimum wage from 1-9-1978. Secondly, if the period of the 1978 settlement which was to expire on 30-6-1981, would not have been extended and a fresh settlement would have been arrived at with effect from 1-7-1981, then the workmen would have got much more than what they would have been entitled to on the basis of the revision of the minimum wage on par with the minimum wage in BHEL fixed by the settlement dated 8/9/1-1980. Shri Manjunatha has specifically admitted this position in his cross examination. It is therefore clear that by extending the period of the earlier 1978 settlement, the workmen who were in service on 9-6-1981, agreed to forego the additional monetary benefit which they would have secured by entering into a new settlement with effect from 1-7-1981 after the expiry of the 1978 settlement. It is thus clear that the demands made by the Unions in respect of parity with BHEL were not settled by the 1978 settlement, the object of which clearly was to extend the period of 1978 settlement till the dispute in respect of parity with BHEL was finally settled.

67. It was contended that after the settlement dated 9-6-1981, the conciliation proceedings were restricted only to the issue of wages for the period of lock-out. Reference in this behalf was made to the conciliation notices issued after 9-6-1981. It is true that in some of the notices the subject was mentioned as wages for the period of lock-out. But this circumstance will have no particular significance because as mentioned above, the earlier notices also mentioned the same subject of conciliation. Moreover, the subject of the conciliation was not mentioned as lock-out in all the notices issued in respect of conciliation proceedings held subsequent to 9-6-1981. In some of the notices the subject was generally mentioned as industrial dispute between the workmen and the management. The workmen have produced at Exh.W-18 and Exh.W-19 the notices issued by the Commissioner of Labour on 10-6-1981, and on 29-7-1981, in res-

pect of the conciliation proceedings proposed to be held on 17-6-1981, and on 14-8-1981, respectively. In both these notices, the subject is mentioned as industrial dispute between the workmen and the management of BEL.

68. The workmen also never accepted the position that the demands made by them on 12-9-1980, were finally settled by the settlement dated 9-6-1981. According to them, the settlements dated 9-6-1981 were arrived at without prejudice to the contentions of either party on the issue raised by the letter dated 12-9-1980 and that the entire issue was kept open for negotiations and settlement after the industrial relations returned to normal and the production picked up. That the position taken by the workmen was not an after thought is clear from the letter dated 5-8-1981, (Exh.W-20) addressed by the General Secretary of the BEEU to the Executive Director of BEL. It reads as follows :—

"We refer to the settlement dated 9-6-81, in respect of the dispute relating to the demands raised through our letter dated 12-9-1980. The terms of the settlement were arrived at without prejudice to the contentions of either party on the issue raised by the said letter, thus keeping the entire issue open for negotiation and settlement independent of the settlement dated 9-6-1981.

In this connection it may also be recalled that when Shri M. S. Krishnan, President of the Union alongwith Shri M. B. Fernandes, President, Indian Telephone Industries Employees Union, Shri D. Rajagopal, President, Bharat Electronics Workers' Unity Forum, and Shri H. Mahadevan General Secy, Hindustan Aeronautics Employees Association had met twice towards May-end Shri C. M. Stephen, Communications Minister, who was in charge of this dispute on behalf of the Govt. of India, he (Shri C. M. Stephen) had first indicated and subsequently confirmed that once the atmosphere settled down, and production picked up, it would be possible to reach a negotiated settlement of the dispute which had been specifically and explicitly kept open under one of the two alternative proposals given by him, if that proposal was accepted by the different concerned Unions.

As in the event, the Unions accepted the aforesaid proposal, and the Industrial Relations have returned to normal, we wish to suggest that, without prejudice in any manner to our right to seek adjudication as provided for under the industrial disputes Act or any other relevant law, negotiations be restricted to find a solution to the original issue which led to the recent prolonged strike and the subsequent lock-out, so that in the spirit of both the settlement of 9-6-1981, and the Communication Minister's earlier assurance, both sides can come

to an amicable settlement of the dispute in question and open a new chapter of industrial relations.

Since the workers are looking forward to an early settlement of this problem, we request you to fix a meeting for this purpose, within a week, and make a settlement possible to be reached within a week thereafter."

To this letter the management gave a belated and cryptic reply on 26-9-1981, stating that the dispute regarding the wage structure had already been fully and finally settled vide settlement of 9th June 1981 and therefore it was not possible to consider any changes in the settlement.

69. It will also be seen from the letter Exh. OW-84 dated 7-8-1981, written by the ITI Employees' Union to the Secretary, Department of Labour, Government of Karnataka that the Union wanted that the dispute in respect of demands made by the notice dated 12-9-1980, which was not resolved by the settlement dated 9-6-1981, should be referred for adjudication. There is therefore no substance in the contention urged on behalf of the management that the conduct of the workmen of the five Bangalore based public sector undertakings and the unions representing them subsequent to settlement dated 9-6-1981, showed that the entire dispute raised by the Unions by the notice dated 12-9-1980, was fully and finally settled by the settlement dated 9-6-1981. Moreover, the contention of the managements that the settlement dated 9-6-1981, fully and finally settled the dispute and hence the reference was barred was impliedly overruled by the Karnataka High Court while directing the Government to consider the question of making a reference. The non-obstante 'without prejudice' clause in the preamble, the nature of the terms of the settlement and the conduct of the parties clearly lead to the conclusion that, as contended on behalf of the workmen, nothing was settled in respect of the demands made on 12-9-1980, by the settlement dated 9-6-1981, and the settlement was a stop gap arrangement arrived at to restore normalcy in the industrial relations and to extend the period of the earlier settlement till the dispute in respect of parity with BHEL contemplated by the controversial clauses in the 1978 settlements, was finally settled.

70. As observed above there was parity in minimum wages in the five Bangalore based public sector undertakings and BHEL in 1973. This parity was maintained in 1983 settlements also. The controversial clauses were incorporated in the 1978 settlements precisely with the object of maintaining uniformity in the minimum wage. It is therefore futile to contend that there was no scope or question of parity during the period covered by the 1978 settlements. The managements of all the five Bangalore based public sector undertakings were bound to implement the relevant clauses in those settlements and to bring the minimum wage on par with the minimum wage fixed in BHEL by the 8-9-1-1980 settlement, retrospectively

with effect from 1-9-1978. The demand of the workmen that the minimum wage should be revised retrospectively with effect from 1-1-1977 is untenable because the minimum wage fixed in BHEL by the 8/9-1-1980 settlement was given effect to from 1-9-1978. Parity in wages cannot be only with respect to quantum. It should be in respect of the period also.

71. The minimum wage (Basic Pay + D.A.) in all the Bangalore based public sector undertakings, therefore, shall be fixed at Rs. 500 per month as on 1-9-1978. The break-up of this amount will be Basic Pay of Rs. 335 + Irreducible D.A. of Rs. 129.10 + Variable D.A. of Rs. 35.10. The Variable D.A. of Rs. 35.10 in BEL, BEML, HAL & HMT shall be at the local consumer price index prevailing on 1-9-1978 at different units, with quarterly adjustments at the rate of Rs. 1.30 per point of rise or fall in the local indices. In ITI the break-up would be as in BHEL viz. Basic Pay of Rs. 335 + Rs. 129.90 fixed I.I.A. at All India Consumer Price Index 300 + Variable D.A. of 35.10 at Rs. 1.30 per point, for 27 points (At consumer price index 327) with quarterly adjustments at the rate of Rs. 1.30 per point of rise or fall in the All India Consumer Price Index. In ITI, however, the amount paid as CCA at 4% will have to be dispensed with, w.e.f. 1-9-1978, till the operation of the 1978 settlements because CCA was paid in ITI in order to ensure uniform minimum wage of Rs. 435 in the five Bangalore based public sector undertakings. The workmen of all these industries will also be entitled to get an extra annual increment at the rate of Rs. 8 on and from 1-9-1978 as in BHEL.

72. It was contended on behalf of the management that the amounts paid under the settlement dated 9-6-1981, will have to be adjusted against the amounts payable to the workmen in the event of the minimum wage in the five Bangalore based public sector undertakings is brought on par with the minimum wage payable in BHEL as per 8/9-1-1980 settlement. This submission cannot be accepted in view of my finding that the ad-hoc payments made under terms 2 and 3 of the settlement dated 9th June 1981 were consideration for extending the period of the 1978 settlements from 30-6-1981 to 31-12-1982 and did not constitute increase in the minimum wage. It is pertinent to note that in clause 3 it is specifically mentioned that the ad-hoc allowance of Rs. 25 per month was not to count as pay for pay fixation.

73. As mentioned above, after the extended period of the 1978 settlements was over, fresh settlements were entered into in 1983, bly the managements of five Bangalore based public sector undertakings as well as management of BHEL revising the minimum wage on uniform basis. The revised wage in the five Bangalore based public sector undertakings was made effective from 1-7-1983, from which date BEL, BEML, HAL & HMT became linked with all India Consumer Price Index. As the operation of the 1983 settlements in the five undertakings was restricted to the period from 1-1-1983 to 31-12-1986, there was no question of these settlements having an effect on the

present dispute which as mentioned above, is limited to the claim for parity with BHEL in respect of minimum wage for the period during which the 1978 settlements in the five Bangalore based public sector undertaking were to be operative. The period of the 1978 settlements was, by virtue of clause 1 in the settlement dated 9-6-1981, extended up to 31-12-1982. It is true that in the 1983 settlements there is no term specifically stating that the said settlements were without prejudice to the dispute under reference, but that was not necessary as the said settlements were agreed to come into effect after the expiry of the 1978 settlements. Further by specific term the 1983 settlements themselves were insulated against any upward revision in the minimum wage by virtue of the award in respect of the dispute under reference. The term which is numbered as 21 in BEL Settlement (Exh. M-BEL-6) dated 26-11-1983, reads as follows —

"The impact, if any, of the award of any Tribunal in respect of the dispute relating to wage settlement of the 1978 settlement will be restricted upto 31-12-1982 only and shall have no effect on terms and conditions of this agreement and shall not result in reopening any of the conditions stated herein".

Identical clauses appear in the settlements in the other four public sector undertakings. It is, therefore, clear that neither the award in this reference will have any impact on the 1983 settlements nor the said settlements had any impact on the dispute in question and would not operate as bar to the present reference. It would certainly not prevent retrospective operation of the award in this reference with effect from 1-9-1978. It would only bar prospective operation beyond 31-12-1982. In view of the above referred clause in the 1983 settlements there is no question of any upward revision of the minimum wage fixed by those settlements consequent upon upward revision if any, in the minimum wage in the five Bangalore based public sector undertakings on the basis of the BHEL settlement dated 8/9-1-1980. The operation of the award will be restricted to the period from 1-9-1978 to 31-12-1982. It is clear that the 1983 settlements were independent settlements. They neither barred the present reference nor will they be affected by the award in this reference.

74. There was enough justification for the strike. As mentioned above, the controversial clauses in the 1978 settlements were incorporated after full discussion and deliberations and with the approval of the Government of India and what the managements were fully conscious of the import of those clauses and what flowed therefrom. In view of the second clause (Clause 1.1 in BEL settlement dated 3-9-1978—(Exh. M-BEL-3), after the settlement in BHEL dated 8/9-1-1980, the managements of the five Bangalore based public sector undertakings were bound to establish parity in minimum wage with BHEL. Moreover, the ultimate authority in respect of BHEL and the five Bangalore based public sector undertakings was the Government of India and in view of the policy of uniformity in minimum wage reflected in the

1973-74 settlements in the five public sector undertakings and in BHEL the Government had no valid basis for discrimination between BHEL and the five public sector undertakings in the matter of minimum wage even in the absence of clause like 1.1 in BEL Settlement. The Government was expected to revise the minimum wage in the five public sector undertakings simultaneously with the revision of minimum wage in BHEL.

75. Shri Michael Fernandes who was the President of the ITI Employees' Union at Bangalore since 1977 and who was one of the joint convenors and chief spokesman of the Joint Action Front has stated in paragraph 28 and 29 of his affidavit of evidence, the developments after the demand notice dated 12-9-1980 was served on the managements by the respective unions and till 26-12-1980, on which date the workmen commenced the postponed strike. He has stated as follows :

"The JAF unions considered all aspects of the matter, and in order to arrive at a solution which would provide uniformity in all the Bangalore-based industries which were on local CPI for DA, excepting for ITI which was on All India CPI, and also with a view to enabling a final settlement to be arrived at and approved, evolved jointly certain proposals which for the just stated reasons were slightly different and lower in the total quantum at the minimum level, and submitted the same to the respective Managements. The union's letter dated 12th September, 1980 (Copy filed and marked as Exh. W-47 at page 105) contains these proposals. However the Management showed no response or concern for holding formal talks to settle this issue and against the Union's enquiries either evaded a clear reply or merely stated that they were yet to hear from the Government. The JAF therefore conducted demonstrations, and then decided to serve a strike notice and accordingly the ITIEU served a notice on 25th November, 1980 (Copy filed as Annexure X to the claim statement of I party ITIEU and may be marked as Exh. W-48), informing that the workmen would launch an indefinite strike from any day after 10th December, 1980. The JAF then organised an agitation by the employees which also included a Raj Bhavan Chalo programme which was conducted on 10th December, 1980 in Bangalore, Hyderabad and Trivandrum. A memorandum dated 10th December, 1980 was also submitted to the Governor of Karnataka (Copy filed and marked as Exh. W-49 at page 107) and copies of the same were made available to all concerned. During this period the Management instead of reassuring the Union and the employees that the wage parity issue which was agitating them would be resolved expeditiously and in a spirit of good will and cordial relations, attempted in an unprecedented manner to strike fear in the minds of the workers by issuing a Circular under reference No. WIL/49 dated 13th December, 1980 (Copy filed and marked as Exh. W-50 at page 111) which was purported to be addressed to the Heads of Divisions & Departments but was actually in an equally unprecedented manner displayed on Notice Boards in the Factory or shown to the employees by their officers or supervisors allegedly under instructions from the Management. This circular was on the subject of the National Security Ordinance and went on to suggest that if workers went on strike they could be detained for upto 12 months. The management had never given such publicity to any draconian Act or Ordinance at any other time, and the present provocative action naturally engaged the workers and created a good deal of tension against them.

29. Since there was no satisfactory response from the Management and since no conciliation proceedings

had been initiated by the Commissioner of Labour even after the strike notice had been served, despite the fact that ITI had been declared as a Public Utility Service, the Union was left with no option than to proceed with the strike which was to commence on 26th December, 1980 as decided by the JAF. However, on 24th December, 1980 the Labour Commissioner called the Managements and the JAF Unions for a joint meeting at which the Managements stated that clearance had just then been given by the Government to the Managements to negotiate on the present demands from 30th December, 1980 onwards and the strike scheduled to start on 26th December, 1980 should therefore be postponed. The JAF Press Note dated 24th December, 1980 (copy filed and marked as Exh. W-51 at page 112) bring out this point. This position was not acceptable to the JAF Unions. Thereafter on 25th December, 1980, which was Christmas holiday, the Management sent for some of the Union Office Bearers including myself and for the first time stated that the Government had just then permitted them to make an offer subject to the conditions that the strike scheduled to start from the mid-night of that day should be withdrawn unconditionally and further that the Union should give up the claim for review and upward revision of the minimum wage and consequential adjustments based on the clause in the 1978 settlements and the subsequent settlements in BHEL. The Management further stated that according to the Government there was no claim whatsoever for the workmen based on the 1978 settlements. We could not accept this stand of the Government. We therefore informed the management that since the deliberate delay and silence during the previous about 9 months both on the part of the Government and the Management had forced us to decide to go on strike, we were left with no option than to start the indefinite strike from the next day as already planned, however, keeping the door open for talks as already stated in the JAF Press Note dated 24th December, 1980. Thereupon the Management stated that under the circumstances they would make the offer tentatively that on condition that the Union gave up its present demand and further agreed to extend the subsisting settlement which was due to expire on 30th June, 1981, by 18th months upto 31st December, 1982, the Management would by way of compensation for such extension pay an amount of Rs. 300 as ad-hoc payment and Rs. 20 per month with prospective effect. The Management further added that if we did not accept this offer but started the strike, the same would stand withdrawn. The Union could not accept either the offer or the conditions which were not only divorced from the clear understanding reached during 1978, but were also contrary to the position taken by the Management till about September 1980 that the Union did have a case for a review and enhancement in wages in view of the Government allowing a higher minimum wage in BHEL."

The factual position stated by Shri Fernandes was not disputed and there is nothing in his cross-examination to discredit his testimony. He reiterated these averments in his cross-examination. He also went on to say that after the demand notice dated 12th September, 1980 was sent the managements stated that the proposals were sent to the Government of India for consideration.

76. According to the managements, the strike was totally unjustified because definite demand was made for the first time on 12th September, 1980, that there was no uniformity amongst the unions in respect of what flowed from the controversial clauses in the 1978 settlements, the issue involved was complex; there was bona fide dispute in respect of the claims made by the Unions and the strike was resorted to while negotiations were pending and even after the management made a negotiable offer just before commencement of the strike. It is however not correct to say that the demand was made for the first time on 12th September, 1980. The dispute in fact, was raised by different unions within a reasonable time after the settlement in BHEL was finalised

on 9th January, 1980. Shri Michael Fernandes wrote to the Executive Director, Bangalore Complex, of ITI Limited on 18th April, 1980, in this behalf. In the said letter (Exh. OW-41) Shri Fernandes traced the background of the 1978 settlements in ITI and went on to state as follows :—

"Though the BHEL had also come up for a wage revision around the same time as the Bangalore-based industries reached a settlement, they were, however, allowed by the Government an interim relief of the order of 10 per cent of their then existing emoluments. Based on subsequent prolonged negotiations, the BHEL signed a final settlement on 8th/9th January, 1980 which has since been implemented. The minimum wage now approved for the BHEL employees effective from 1st September, 1978, is at a higher level than that approved for the Bangalore-based industries, including ITI, effective from 1st January, 1977 and updated 1st September, 1978. The substantial difference is perceptible in respect of the employees already on the rolls on the appropriate effective dates when the employees of Bangalore-based industries obtained only a fitment benefit whereas the employees of BHEL got an additional increment too. The difference is even more pronounced in the case of employees joining after the effective dates. This is because whereas in the Bangalore-based industries the minimum basic and DA as on 1st September, 1978 adds only upto Rs. 417 the same for the BHEL has been fixed at Rs. 500. It may also be pointed out that the rate of HRA & CCA is higher for BHEL than for the Bangalore based industries, wherever applicable.

Since the Government's decision on the minimum wage has changed over the period between the settlement in the Bangalore-based industries and in BHEL, it has now become necessary to revise the minimum wage for the Bangalore-based industries, including ITI.

We, therefore, request you to implement immediately the minimum wage as settled in BHEL with the approval of the Government, and also make necessary consequential adjustments in the wage structure in ITI in consultation with the Union. The approval of the Government for a higher minimum wage for BHEL with which ITI had parity in the settlement effective from 1st January, 1973/1st December, 1973, should be regarded as valid for ITI in the context of the provisions made in the settlements dated 25th May, 1978 and 1st September, 1978 referred to earlier, and also in keeping with the spirit of the stand taken by the Management/Government during the negotiations leading to these settlements. Early action in this regard is called for as otherwise the present glaring disparity would give rise to serious industrial unrest."

77. As can be seen from Annexures 2 and 3 to the affidavit of evidence of Shri Manjunatha, after the receipt of letter Exh. OW-41 there were meetings between the managements and the unions. At annexure A-2 is the record of the meetings held between the office bearers of BEWUF and the management of BEL on 30-5-1980 and 21-6-1980 and at annexure A-3 to the said affidavit is the brief record of the meeting, of the office bearers of Bharat Electronics Employees' Union (BEEU) and the representatives of the management of BEL, held on 29-5-1980. It will also be seen that the Bharat Electronics Mazdoor Sangh (BEMS) had also taken up the matter with BEL management vide letter dated 26-5-1980, 26-6-1980 and 11-7-1980 and the Union even staged a Dharna before the gate of the factory as a mark of protest against the adamant attitude on the part of the management of BEL in not implementing clause 1.1 of the settlement dated 3-9-1978. The Bharat Electronics Workers' Unit Forum (BEWUF) had also raised the dispute vide letter Exh. M-BEL-8 dated 7-6-1980.

78. It is true that there was no uniformity amongst the various unions in respect of the monetary benefits that flowed from the controversial clauses in the 1978 settlements

and about how much was payable by way of difference by implementing the said clauses and effecting parity in minimum wage with BHEL. It is also true that this divergence in views amongst the different unions persisted even after the strike was commenced. It was therefore contended that the issue involved was complex and hence the management started negotiations for settling the dispute. But this divergence in demands was not the difficulty which prevented the managements from effecting parity in minimum wage. The difficulty was not of calculating the exact quantum payable by fixing the minimum wage at Rs. 500 in the five Bangalore based public sector undertakings on par with BHEL. The difficulty was in the approach adopted by the managements. Even though the managements were conscious of the import of the clauses in question in the 1978 settlements and what they were expected to do in respect of the minimum wage in their undertakings after upward revision of minimum wage in BHEL, they adopted a rigid stance, may be at the instance of the Government of India, that nothing flowed from the clauses in question in the 1978 settlements, that BHEL was not a comparable industry and there was no question of bringing the minimum wage in the five Bangalore based public sector undertakings on par with the minimum wage fixed in BHEL by the settlement dated 8-9-1-1980, and that only in the interest of maintaining good industrial relations that they were prepared to confer some monetary benefits on the workmen of the five public sector undertakings. This was the stand of the management all along. It appears that the managements themselves were prepared to meet the demands of the workmen to effect parity in minimum wage with BHEL but the rigid attitude adopted by the Government of India rendered them helpless. Because of the rigid attitude of the Government the managements were forced to toe the same line. It is irrelevant as to what prompted the Government of India to adopt such unreasonable rigid attitude especially in view of the fact that the controversial clauses were incorporated in the 1978 settlements with the approval of the Government of India. The change in the Government may be responsible for the shift in the stand. The 1978 settlements were entered into when the Janta Government was in power at the Centre while at the material time when the demand for parity was raised by the Unions that Government had already fallen. Whatever the reason the stand taken by the Government of India and consequently by the managements was completely inconsistent with the relevant clauses of the 1978 settlements as well as with the policy of uniformity in the minimum wage as reflected in the 1973-74 settlements in the five public sector undertakings and in BHEL fixing a uniform minimum wage of Rs. 300 per month. It was this rigid stand that prevented the managements from adopting any formula for the purpose of effecting parity in minimum wage with BHEL. The complexity was created by this stand. Of course, variance in the claims made by different unions would have posed some difficulty but the negotiations did not fail because of the difficult in making exact calculations about the difference payable.

79. It is also pertinent to note that after the Joint Action Front formulated concrete proposals and the constituent unions made those proposals to the respective managements by the demand notice dated 12-9-1980, the management did not respond and except the BEL management the others did not reply to the said demand notice. There were no bilateral negotiations and no attempt was made by the managements to invoke the conciliation machinery.

80. Before going on strike the unions served the respective managements with notice of strike. In BEL, in HMT (Horological Division) and in BEML-KGF, the notice of strike was given on 22-11-1980. These notices are produced at Exh. FW-11, Exh. M-HMT-6 and Exh. M-BEML-32 respectively. In HMT (Watch Division) the notice (Exh. M-HMT-36) was served on 24-11-1980. In BEML, Bangalore and ITI the notice was served on 25-11-1980. These notices are at Exh. M-BEML-5 and Exh. M-ITI-4 respectively. In HAL the notice (Exh. M-HAL-31) was served on 4-12-1980. As per these notices the strike was proposed to be commenced any time after 10-12-1980. The strike however was postponed and actually commenced on 26-12-1980 perhaps, as

claimed by the workmen, in view of the pendency of the conciliation proceedings, which were commenced practically simultaneously with the strike notices. In BEL the conciliation notice was issued on 17-11-80 and the conciliation proceedings were held on 24-11-1980. In BEHL and HAL the conciliation notice (Exh. MW-4) was issued on 25-11-1980, and the conciliation meeting was held on 28-11-1980. The Conciliation Meeting in which representatives of all the managements and the representatives of the Joint Action Front of the negotiating unions participated was held on 2-12-1980. Notice of this meeting (Exh. M-HAL-50—Exh. W-5) was issued on 29-11-1980. Another joint meeting of all the managements and the unions was held on 18-12-1980. The notice (Exh. W-6) in respect of this meeting was issued on 16-12-1980. In all these notices except the notice Exh. W-2 the subject was mentioned as demands of the employees of the public sector undertakings. In Exh. W-2, the subject was mentioned as non implementation of the agreement entered into by the management of BEL Bangalore on 3-9-1978. In all these meetings the managements adopted the same stand as before and hence no agreement could be reached in respect of the demands of the workmen. It is also significant to note that no concrete proposal was made on behalf of the managements after 12-9-1980, or during these meetings. A proposal, however, was made after the managements were informed by letter dated 23-11-1980, that the indefinite strike would be commenced from 26-12-1980. By this proposal the management offered to pay a lumpsum of Rs. 300 and an ad-hoc payment of Rs. 20 p.m. with effect from 1-1-1981, on conditions that the strike was not commenced that the period of the 1978 settlement was extended upto 31-12-1982. The Unions rejected this proposal, and rightly so, because the said proposal did not indicate that the managements changed their stand that the workers were not entitled to anything on the basis of the controversial clauses of the 1978 settlements nor by way of general policy of uniformity in minimum wage. The proposal was not made on the basis that according to the managements, the amounts offered represented the difference payable to the workmen of the five Bangalore based public sector undertakings by raising the minimum wage in those undertakings to the level fixed in BHEL by the agreement dated 8/9-1-1980. The proposal was made for the purpose of ensuring harmonious industrial relations and not because the workmen were entitled to get those amounts as difference in the minimum wage. The intention for making the proposal was also clear. It was made just for the purpose of preventing the workmen from going on strike. It was made clear to the workmen that if they commenced the strike the proposal was to stand withdrawn. It is thus clear that the management flatly refused to implement the terms of the 1978 settlements and this attitude which, as contended on behalf of the workmen, amounted to unfair labour practice, was enough justification for the workmen to commence the strike which was postponed in order to give enough opportunity to the managements and the Government of India to change their stand, and to make a reasonable offer in respect of the demands made by the workmen.

81. The strike however was illegal. It was so for various reasons. Section 24(i) of the Industrial Disputes Act, 1947, lays down that the strike or a lock-out shall be illegal if :

- (i) It is commenced or declared in contravention of Section 22 or Section 23; or
- (ii) It is continued in contravention of an order made under sub-section (4A) of Section 10-A.

Section 22 which prohibits strikes and lockouts in public utility services reads as follows :—

1. No person employed in a public utility service shall go on strike in breach of contract :
 - (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking;
 - (b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

2. No employer carrying on any public utility service shall lock-out any of his workmen :

- (a) without giving them notice of lock-out as herein-after provided, within six weeks before locking out; or

- (b) within fourteen days of giving such notice; or

- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

3. The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

4. The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person/persons and in such manner as may be prescribed.

5. The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

6. If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any person employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day."

Section 23 contains general prohibition of strikes and lock-outs. It reads as follows :

"No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out :

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

- (b) during the pendency of proceedings before (Labour Court, Tribunal, or National Tribunal) and two months after the conclusion of such proceedings.

- (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A; or

- (c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award."

82. The ITI, HAL and HMT Hyderabad are public utility services. They were declared so before the strike notice was given. The notifications declaring ITI and HAL as public utility services are produced at Exh. M-ITI-25 (1 to 3) and Exh. M-HAL-132 to Exh. M-HAL-137-A respectively. The

notification in respect of HMT, Hyderabad dated 21-12-1980, which is produced at Exh. M-HMT-68 shows that by the said notification the undertakings was continued to be a public utility service for a further period of six months from 16-1-1981. The earlier notification dated 5-6-1980, is referred to in this notification. It will be seen from Exh. M-ITI-4 that the notice of strike dated 25-11-1980, was received by the management of ITI on 26-11-1980, while the notice Exh. M-HAL-31 shows that it was sent on 4-12-1980. The notice to HMT was sent on 2-12-1980. By the first two notices, the concerned managements were informed of the intention of the workmen to go on indefinite strike anytime after 10-12-1980, while by the notice to the HMT, Hyderabad the management was informed that the workmen intended to go on indefinite strike on or after 17-12-1980. None of these notices conformed to the requirements of sub-clause (a) of section 22. The notice of HAL, which as mentioned above was sent on 4th December, 1980, contravened section 22(b) also because by the said notice the workmen proposed to go on strike, within 14 days of giving the notice.

83. The strike in HAL, BEL and BEML was illegal because it contravened sub-section (b) of section 23 of the Industrial Disputes Act, 1947. It will be seen from Exh. M-HAL-27 that reference dated 12-11-1974, in respect of dispute regarding additional bonus was pending before the Industrial Tribunal. It will also be seen from Exh. M-BEL-14 to Exh. M-BEL-17 that references dated 25/30-6-1979, 21-6-1974, 19-6-1979 and 2-4-1974 respectively were pending when the strike notice was given. Further as can be seen from the first annexure to the counter statement filed on behalf of the management of BEML that reference number ID-25/1974 was pending at the material time.

84. The strike in the public utility services and in other undertakings was illegal because it was commenced during the pendency of the conciliation proceedings before the conciliation officer. As mentioned above, at about the same time when the strike notices were given conciliation proceedings in respect of the demands of the workmen were commenced and had not come to an end when the strike was actually commenced on 26-12-1980. Admittedly, by that time the conciliation officer had not made any failure report. The strike in the public utility services viz. ITI, HAL and HMT Hyderabad was thus in contravention of clause (d) of sub-section (1) of section 22, while the strike in the other undertakings contravened sub-section (a) of section 23 of the Industrial Disputes Act, 1947. There is also substance in the contention urged on behalf of the managements that the strike was illegal also because it was in contravention of sub-section (c) of section 23. The strike was not only for breach and non-implementation of some of the clauses in the 1978 settlements but it was in respect of all the demands made by the workmen by the notice dated 12-9-1980, and some of these demands were in respect of matters covered by the 1978 settlements which were in force.

85. It was contended on behalf of the managements that even assuming that the strike was justified, its continuance after 8-2-1981, on which date Shri Stephen, the then Honourable Minister for Communications made proposals during the tripartite discussions held at New Delhi on 7/8-2-1981 was not justified at all. Shri Manjunatha has mentioned these proposals in paragraph 22 of his affidavit of evidence. He has stated as follows :—

"I say that despite the strike by the workmen, the Government of the State of Karnataka and the Managements of these establishments continued bi-partite/tripartite discussions almost continuously which did not prove successful. The Government of India called a meeting presided over by the then Union Labour Minister on 7/8-2-1981, at New Delhi. This meeting was attended by the Union Secretary for Labour and also the Commissioner of Labour, and the Secretary, Department of Labour, Government of Karnataka along with the representatives of all the Managements and the Trade Unions. This was also attended by the Central Trade Union Leaders. The Late Shri C. M. Stephen, the then Hon'ble Minister for Communications who attended

the meeting presented the views of the Management and the Government of India. After protracted discussions the Union Minister for Communication made several offers and the important among which were the following :

- The Unions may terminate the settlements forthwith and the Managements would not insist on the normal notice period and the parties may negotiate a new wage settlement. It was to be noted that the settlement was valid upto 30-6-81 and this offer was made well before the settlement was due to expire;
- Management would pay a sum of Rs. 25 from 1-1-1981 and a sum of Rs. 700 as ad-hoc sum for past period and the agreement should be extended upto 31-12-1982. In the course of further discussions, the Minister even agreed to consider reduction of the period;
- In the event of accepting either (a) or (b) the Management would consider giving recoverable advance for removing financial hardship to the workmen because of the strike;
- It was also proposed that if the two alternatives were not acceptable they might take an ad-hoc recoverable advance of Rs. 600 and the whole matter would be referred either to arbitration or adjudication as the unions may choose.

As stated by Shri Manjunatha in his affidavit of evidence these offers are enumerated in the information bulletin number 135 issued by the Bharat Earth Movers Employees Association (BEMEA)-KGF on 10-2-1981. The information bulletin which is produced at Annexure-4 to Manjunatha's affidavit of evidence also makes reference to the offers and counter offers made by the parties during the tripartite discussions that took place on 7/8-2-1981, and also to the efforts made by the leaders of Joint Action Front to settle the dispute even by scaling down their demands and as to how the Government of India shifted its position. It would be worth while to reproduce the entire bulletin which negatives the contentions of the management that they were keen on resolving the dispute and made reasonable offers and that the negotiations failed only because of the rigid stand taken by the striking workmen. The information bulletin reads as follows :

"Negotiations were held between Shri N. D. Tiwari, Minister for planning and Labour, Shri C. M. Stephen, Minister for Communications, Shri Jaknur, Labour Minister Karnataka, Shri V. G. Venkataswamy, Labour Minister, Andhra Pradesh and the leaders of the Joint Action Front which consist of the negotiating trade unions of the Bangalore based public sector Industries, as well as, the leaders of the striking unions from Hyderabad, Raibareli, Nasik, Kanpur, Lucknow, Barrackpore on 7th and 8th instant.

The Government had also invited the representatives of non-striking unions of Bangalore HMT Machine Tools division. The JAF recorded their protest about their presence.

The Central Trade Unions representatives ALTUC, INTUC, CITU and RMS were present during these talks to assist the JAF in the attempt to bring about a settlement.

On 7-2-1981, the first day, the Government made the following offers :

- Rs. 700 as lumpsum payment and Rs 25 as monthly increase in wages from 1-1-1981, with extension of subsisting settlement by one more year, viz. upto 30-6-1981; or
- If the above offer is not acceptable, the Government would refer the question of the relevant clauses in the 1978 settlement to arbitration or

adjudication and would pay only a recoverable advance of Rs. 700 to be recovered in 12 monthly instalments, and nothing more. There would be no extension of the existing settlement.

The unions rejected both these alternative offers and made the following counter offer :

- (a) Increase of Rs. 30 in monthly basic and of Rs. 5 in the irreducible D.A. and one increment to all workers from 1-1-1981 (One more increment originally demanded was given up in this counter offer).
- (b) Arrears to be paid from 1-9-1977 upto 31-12-1980 (Instead of from 1-1-1977 as originally demanded) which should also count for PF., Bonus, Incentive etc.
- (c) Unions agreed to the extension of the existing settlement for an additional period of 6 months i.e. upto 31-12-1981, in respect of wages and D.A. only.
- (d) New entrants recruited after the 1978 settlement should also be given settlement benefit.
- (e) Strike period wages to be paid OR this issue refer to adjudication, and one month's wages to be given as recoverable advance, to be recovered in instalments only after the award of this adjudication is given.
- (f) No victimisation for participation in strike.
- (g) Withdrawal of all police cases filed against employees in connection with the strike.

As Government of India did not agree to this offer made by the JAF but agreed to meet again on 8-2-1981 to make further efforts at arriving at a settlement.

Thereafter, the central trade union leaders and the JAF leaders, after prolonged discussions among themselves, decided on the final rock button offer to be made to the Government with a view to ending the indefinite strike by about 1,25,000 workers of BEML, BEL, HAL, HMT & ITI in Bangalore and elsewhere in the country and BIL, ECIL and MICHLANI in Hyderabad, which had entered the 45th day having been started on December 26th, 1980.

According on the second day of the talks (viz. 8-2-1981) the central trade union leaders from AITUC, INTUC, CITU and RMS discussed this rock button offer with the Government of India. However Mr. C. M. Stephen, who lead the negotiation of this day on behalf of the Government of India, rejected this final offer of the unions and made the following alternative offers which is reality amounted to a certain degree of back sliding over the Government's earlier offers :

1. Rs. 700 as lump sum payment and Rs. 25 increase in monthly wages from 1-1-1981 provided the agreement was signed on the same day viz. 8-2-81, itself. The existing settlement was to be extended by one year upto 30-6-1982. If the agreement was not signed on 8-2-1981, this offer would be reduced to Rs. 600 as lump sum and Rs. 25 increase per month, and the extension of the settlement would be by 18 months viz. upto 31-12-82.

OR

2. The strike to be called off immediately and the negotiations should be carried on or the entire issue would be referred to arbitration/adjudication and only a recoverable advance of Rs. 700

would be given to all employees. If this offer was not accepted on this day (8-2-1981) itself, the recoverable advance would be reduced to Rs. 600.

The Union leaders of the JAF as also Shri F. M. Khan, M.P. who heads the non-striking union of HMT Machine Tools Division, Bangalore who was present, could not agree with the stand of the Government and were left with no option but to reject the above alternative offers of the Government of India. It must be emphasised that the JAF leaders made every efforts with the assistance of the central trade union leaders to arrive at an honourable settlement, by scaling down considerably their original demand. The rock button final offer discussed with the Government of India by the central trade union leaders on behalf of the JAF was as follows :

- (a) Monthly increase from 1-1-81 of Rs. 30 in wages and one increment to all workers, extension of the existing settlement upto 31-12-1981 in respect of wage and D.A. only.
- (b) Arrears (also counting for PF etc.) from 1-9-78 to 31-12-81 instead of from 1-1-71 as originally demanded.
- (c) conditions regarding new entrants, strike wages, victimisation etc., remain the same before.

Since the Government would not consider the above final proposal of the unions the JAF had no choice to withdraw the same. The failure of the talks is due to the adamant and uncompromising attitude of the Government of India. It is now up to the Government of India. It is now up to the Government to come forward with acceptable proposals for reaching a fair and Honourable settlement. The workers on their part will intensify their struggle towards this end and will not yield to the designs of the Government.

Mr. C. M. Stephen's allegation that the strike was politically motivated is baseless and mischievous. It was not regarded as being politically motivated even when it had advanced into several days, but now in order to cover up the Government failure to settle the issue, the Government itself has invented as political reason. It may be pointed out that even unions belonging to the ruling party are participating in this strike.

The unions have not demanded parity at all levels of the pay scale with any or all industries, but only at the minimum level of basic wage and D.A. obtaining in BHEL. This parity between the Bangalore industries and the BHEL was introduced in clear terms by the Government (headed by Mrs. Indira Gandhi) in 1973 itself, and Mr. Stephen was then as a trade union leader of the HMT Kalmastery a party to this settlement, in the Bangalore industries.

Although the issue of the parity with BHEL's minimum wage is about a year old, and calls for only the implementation of the provision of the 1978 settlement and the commitments made by the managements at that time, the Government has taken a stand bilaterally just on the eve of the strike that such parity cannot be agreed to. Officers of adjudication or arbitration have come too late during the past few days after the strike had reached a very advanced stage. As such an exercise now would be not only time consuming but also harmful industrial relations and production. The JAF is unable to accept adjudication/arbitration. It may be noted that a suggestion made by Mr. Stephen about 12 days ago there could be adjudication of the basic question along with a payment of Rs. 600 as lump sum and Rs. 25 per month wage increase has been now disowned by him."

It is an admitted position that after the discussions at New Delhi at the highest level failed there were no further bilateral discussions between the managements and the unions nor there were any conciliation proceedings held after the conciliation officer submitted his failure report on 5-2-1981.

Whatever discussions took place thereafter were between the State Government and the Trade Unions.

86. It would be significant to note in this context what the Commissioner of Labour, Government of Karnataka, (The Conciliation Officer) stated in the factual report submitted by him on 7-2-1981. He has stated as follows in the last two paragraphs of the said report :

"The efforts made by the Joint Labour Commissioner and the Commissioner of Labour to bring about a settlement between the parties did not yield any results, in view of the stand taken by the Management to the effect that there is no specific clause in their settlement agreeing to raise wages, D.A. or variable D.A. In order to demonstrate the worker's resentment on the one hand and to pressurise the Management and the Government to make efforts to bring about the settlement on the other, the Joint Action Front served a strike notice to go on strike with effect from 26-12-1980.

In the meantime an offer was made by the Management to the effect that they would give an increase in wages of Rs. 20 p.m. from 1-1-81 and Rs. 300 as an ad-hoc lumpsum payment provided the Union agreed to extend the term of settlement to 31-12-1982. Later an offer was made to raise to Rs. 25 as prospective increase in the wage and Rs. 600 as lumpsum. As the same was not acceptable either to the Joint Action Front or to the Management of the HMT, the Conciliation Officer had no other alternative than to conclude the proceedings as failed under section 12(4) of the Industrial Disputes Act, 1947."

It is thus clear that the conciliation proceedings failed because of the rigid stand of the managements and the Government of India, that nothing flowed from the relevant clause of the 1978 settlements, specific reference to which is made by the conciliation officer in the above report. It will also be seen from further report dated 9-2-1981, made by the Commissioner of Labour that he expressed futility of continuing the conciliation proceedings and recommended that a reference to the National Tribunal should be made as the question was of National importance. He even suggested the issues to be referred for adjudication and requested the Government of Karnataka to move the Government of India to prohibit the strike while making the reference. The Government of India however, did not make the reference till to some extent compelled to do so.

87. It was contended that a specific suggestion to refer the dispute for adjudication was made by Shri Stephen during the discussions which took place on 7/8-2-1981, but the unions rejected the suggestion. Apart from the fact that the suggestion was belated, nothing prevented the Government of India from making a reference especially when the managements and the Government of India thought that the issue involved was complex. Consent of the striking unions was not necessary for making a reference to the National Tribunal. The Government of India which was concerned in the dispute was the Appropriate Government to make a reference to the National Industrial Tribunal, and hence the managements cannot make much of the fact that at some stage the unions rejected the suggestions to refer the dispute for adjudication. The fact that under the settlement dated 9-6-1981, the Union ultimately accepted the same offer which was made by Shri Stephen on 7/8-2-1981, does not necessarily mean that the offer was reasonable, that it completely satisfied the demands of the workmen in respect of parity in minimum wage with BHEL and that the workmen should have accepted the offer and withdrawn the strike. It is pertinent to note in this context that the offer was not made without prejudice to the demands of the workmen in respect of implementation of the relevant clauses of the 1978 settlements and for parity in minimum wage with BHEL.

88. The strike however degenerated into violences. The claim of the workmen that the strike was throughout peaceful and that nothing of consequence took place during the

strike period and after the strike was withdrawn, in unacceptable in the face of definite evidence led by the management to establish the allegation of large scale violence resorted to by the striking workers.

89. Shri K. M. Appaiah, S/o Shri Mandanna, (M-W-5) who was the Chief Security Officer of M/s. Indian Telephone Industries Limited, Bangalore, has stated in his affidavit of evidence that during the strike period there was number of incidents which was sometimes violent resulting in damage to person and property of the establishment. He made mention in his affidavit of evidence of a few of such incidents which took place during the period from 26-12-1980, the day on which the strike was commenced to 5-3-1981. He also produced alongwith his affidavit at Annexure 1 to 9 some of the intelligence reports made by him to his superiors in respect of all these incidents and also the letters written by him to the police authorities for adequate police protection to the management officers in general and some officers in particular who were chosen as targets for intimidation and threats by the striking workers. He has made mention of these incidents in paragraph 1 of his affidavit of evidence. He has stated as follows :—

"1. On the day of strike, that is on 26-12-1980. Union volunteers headed by Shri Jaffer Khan and Shri Pratap Kumar and others came to the Main Gate to prevent employees entering the factory early in the morning around 5.30 a.m. After sometime Mr. M.B. Fernandes, accompanied by Mr. Rajagopal and Mr. M. S. Krishnan came to the Main Gate and instructed volunteers not to allow even officers of Gr. V and below enter the factory to report to their work. Accordingly, the Union activities viz. M/s. Jaffar Khan, Pratap Kumar and others stopped all the officers from entering the factory. Any amount of mutual discussion by the Executive Director with the Union Leaders did not yield any result. Finally officers had to go officers club and from there after sometime they went home as at Annexure-I.

As the agitation continued even on the next day i.e. on 27-12-1980, Management had to seek the protection from Police to bring the Officers for work. Mr. J. S. Grewal who was the Vice President of the officer's Association lead the officers with the help of police inside the factory. Shri Grewal was threatened by the employees of dire consequences at Annexure-2.

On 29-12-1980, officers were not allowed to go inside the factory. However, after some discussion with the Union office bearers grade V and above officers were allowed to go inside. Mr. Grewal CCS who came in his car inside the Factory was stopped and humiliated by Union activists who were at the Main Gate. Mr. T. Prakash St. No. 12011 of F-80 spat on Officers who were entering the Factory

On 13-2-1981, the Commissioner of Police, made Police Bandobust to bring officers from various points to the factory to attend to their work. Union activists threatened officers of the d're consequences for having attended the factory and we had to request the police to give adequate police protection. A copy of the complaint addressed to Police authorities may please be seen at Annexure-3.

On 14-12-1981, a section of the workers M/s. J. S. Mani, M. S. Mohan, Prahlad Murthy etc. claiming as members of INTUC came inside the factory alongwith the officers who have been attending. The ITI Employees Union members threatened those INTUC workers as well as officers for attending the factory and some of the officer were prevented at the bus-stop itself. Complaint addressed to the police authorities in this regard is placed at Annexure-4.

On 16-12-1981, number of union activists were arrested for having indulged in various criminal activities and committing cognizable offences by abusing a Post Office, Trains etc., and report in this regard is placed at Annexure-5.

On 23-2-1981, Union indulged in threatening officers and hospital staff, including doctors and the Chairman, Executive Director and Finance Director of the Company in order to force them to sanction ESI Leave for non-genuine cases. A complaint given to the Police authorities in this regard is at Annexure-6.

On 25-2-1981, more buses were arranged to pick up loyal workers and officers to attend the factory and in this connection reports were received stating that union activists were planning to resort to intimidation and threat to prevent loyal workers and officers attending the factory. In this regard a Police complaint was lodged which is at Annexure-7.

On 27-2-1981, there were rumours of violence being perpetrated in the Township indulging in arson and looting to demoralise officers and loyal workers who were attending the factory from 2-3-1981. A complaint in this regard given to the Police authorities which is at Annexure-8.

On 5-3-1981, volunteers of Union burnt a Car No. MYA 161 in which Congress (I) Workers came to Township to persuade employees to resume work. Shri F. M. Khan, the then President of INTUC was also present at that time in the ITI Township. This incident took place inside the Township Area adjacent to the Factory. The police have registered a case in this regard.

On 12-2-1981, Shri J. S. Grewal, CCS was assaulted in his house around 9.00 p.m. by some of the union activists. The police who were patrolling the area immediately went to his house after getting the information and they have registered a Case. In this regard, an employee by name Shri Nithyananda, St. No. 12640 was arrested. Report is at Annexure-9.

It is true that he was not an eye witness to all the incidents mentioned by him in his affidavit of evidence and the complaint letters to the Sub-Inspector of Police, Krishnarajapuram Police Station. But his evidence in respect of the incidents to which he was not an eye witness cannot be discarded because as asserted by him in his cross examination as a security officer his duties were to maintain order in the factory as well as in the township, collect intelligence reports and submit them to the management and to prevent thefts and sabotage. Moreover, the standard of proof required in an industrial adjudication for establishing that during the strike the striking workers resorted to violence, would not be the same as required in a criminal case. It would not be necessary to examine the persons concerned nor to establish identity of the culprits involved in the incidents. The evidence is bound to be of general nature and based on the reports received by the concerned officers and complaints, oral as well as in writing, received by such officers from the victims of the violence.

90. Shri Subrayan A. Sethuraman (MW-6) who is presently the Chief Manager of BEL was working as the Chief Administrative Manager during the strike period. He has narrated some of the untoward incidents that took place in and around the factory during the strike period. He has stated as follows :—

"On the day of commencement of the strike, some activists masking their faces picketed the factory gates holding out threats and preventing willing workers from attending duty. They also stoned the Security North Gate Office and broke the telephone sets and glass panes. The Police had to be called in to control the situation (Ref. Annexure-I of the Affidavit filed by Shri M. C. Ponnappa Chief Security Officer).

On 3rd January, 1981, a few Trade Union Leaders prevented Transport Department Officials from attending duty and created a scene. The police had to be again called in (Ref. Annexure-II of the affidavit filed by Shri M. S. Ponnappa, Chief Security Officer).

On 21st January, 1981, a few volunteers who were fully drunk threatened the Security Guards on duty at the Company's Industrial Estate adjoining the Factory. They stood two building in the Industrial Estate and a Scooter parked there and also a building within the factory perimeter wall. The police were called in who nabbed the miscreants (Ref. Annexure-III of the Affidavit filed by Shri M. C. Ponnappa, Chief Security Officer).

During the strike, period, we also received a number of oral and written complaints from Executives and workers that they were being threatened by the Union activists against attending duty. Some of them even told that the activists had come in a mob to their houses and threatened them in the presence of their family members. We brought these to the notice of the Police also (Ref. Documents 22 to 24 in Vol. I).

On 1st March, 1981, some miscreants had set fire to the factory's cultural hall situated near the factory the estimated loss being to the tune of about Rs. 2 lakhs. (Ref. Document No 21 of Vol. I).

In his Examination-in-Chief he asserted that he had personal knowledge of all these incidents mentioned in his affidavit of evidence. He claimed that some of the incidents were witnessed by him personally. According to him, his office is so situated that it was possible for him to see what was happening in and around the factory. He also asserted that some incidents were directly reported to him by the concerned officers and some of the workers directly reported the incidents in which they were involved. He further stated that he had knowledge of all the documents produced by BEL and that some of them were referred to by him in his affidavit of evidence. He asserted in his cross examination that the assertions in his affidavit in respect of the incidents which were not personally seen by him, were based on the oral as well as written reports submitted by Shri M. C. Ponnappa, the Chief Security Officer. He further asserted that a wireless set was installed in his office, that Shri Ponnappa who used to go in and around the factory used that media for communicating to him whatever was happening in the factory that Shri Ponnappa used to communicate on telephone also and that some of the officers including Shri Aiyana, had complained to him personally about the incidents in which they were concerned.

91. Shri Soumyodev Maitra (MW-10) who was working as the Chief Administrative Manager of Ghaziabad Unit of BEL in 1980, and who is presently working as the Chief General Manager of BEL Units in Northern India has stated in his affidavit of evidence that in Ghaziabad Unit of BEL there was no prolonged strike between 26th December, 1980 and 14th March, 1981, but though during this period by and large the workers attended duty, there was almost continuous labour unrest, tension, commotion and mass indiscipline. He further stated that on several days during this period, groups of workers led by the Union representatives resorted to mass unauthorised movements, processions, shouting of slogans, addressing the workers with inflammatory speeches, display of banners etc., even within the Unit premises and that there were also sporadic violence, gherao and work-stoppages. According to him, all these were by way of an echo or sequel to the prolonged strike going on at the Bangalore Unit of BEL. He mentioned some of the more serious incidents in paragraph 5.5 to 5.7 of his affidavit of evidence and gave in paragraphs 5.8 the details of the disciplinary action initiated against 21 workmen for indulging in serious misconduct including gherao, damage to company's property during the period from 26th December, 1980 to 26th February, 1981.

92. Shri N. G. Pradhan (MW-12), who was working as the Assistant Personnel Manager in the Rail Coach Division of BEML during 1981, has stated in paragraph 6 of his affidavit of evidence several acts of violence committed by the workmen inside the factory on 16th March, 1981, 18th March, 1981 and 26th March, 1981.

93. Shri G. C. Pangarkar (MW-17), who was working as the Chief Security & Vigilance Officer in HAL, Bangalore since 1980 to 1985, has stated in his affidavit of evidence

that during the strike period number of violent and untoward incidents resulting in damage to Company's property and assault on officers, took place. He has described some of these incidents in paragraphs 5 to 10 of his affidavit of evidence. In paragraphs 11 to 13 he has described the general situation prevailing in and around the factory during the strike period. He has stated as follows :—

- "11. The situation in the City of Bangalore including the HAL area had become so tense that the Police Commissioner promulgated Prohibitory Orders under the Karnataka Police Act on various dates during the period of strike indulged in by the workmen of HAL and other Bangalore based Central Industries. (vide documents No. 152 in the list of documents). The Police had to open fire on 21st January, 1981 to quell rioters mob near the HAL, Airport when the Bangalore Bandh called by the Joint Action Front of the striking public sector workers took a violent turn. One of those killed in the firing was an employee of HAL, Foundry & Forge Division by name Sriram (Ref. Deccan Herald report dated 22nd January, 1981 vide document No. 48, original of which is annexed to this Affidavit as annexure-8)
12. The Police registered a number of cases on various dates against the HAEA activities who abused/intimidated and assaulted the officers and workmen and also indulged in other acts of violence. (Ref. documents No. 161 (in the list of documents) which is a letter dated 11th June, 1985 received from Police Commissioner enclosing copies of FIRs).
13. The situation in and around the HAL area was so tense that even essential service personnel like officers and workmen of the Security Department were also threatened, intimidated and assaulted. Hence in order to guard the vital defence installations, the Management had to requisition the services of the Border Security Force and Armed Karnataka Reserve Police, during the strike period and even thereafter, vide Annexure-9, 16 and 11 to this Affidavit."

He had also filed alongwith his affidavit of evidence the letters written to the Commissioner of Police and other Police Authorities from time to time during the period of strike for Police protection, the complaints lodged with the police in respect of the incidents that took place during the period of strike and the report's received by the Security Department in respect of these incidents.

94. Shri N. G. Chakraborty, (MW-18) who is working as Security and Vigilance Officer at Barrackpore factory of HAL has stated in his affidavit of evidence that the workmen of Barrackpore Branch Factory went on strike from 26th December, 1980 to 12th March, 1981, that during the strike period the volunteers of Unions were picketing outside the gates and except the Factory Manager, Security Officer and Security & Fire Brigade Staff, other officers, who came to work were not permitted by volunteers to enter the factory. He also stated that volunteers were shouting slogans every day at about 7.30 a.m., and that the essential services personnel of electrical, mechanical, civil and canteen had joined the strike. Water supply to the factory was completely disrupted from 26th December, 1980 to 12th March, 1981. In his cross examination, he denied the suggestion that during the strike period policemen were posted at the gate as well as in the factory premises and asserted that the management had requested the police authorities to arrange for police protection but it was not given. He also denied the suggestion that no written report was submitted to the Factory Manager either by him or by the Security Officer in respect of preventing the officers by the striking workmen. He also denied the suggestion that the officers remained absent on their own because of lack of transport facility and no officer was prevented from entering the factory. He also asserted in his further cross-examination that complaints were made to the police about prevention of the officers.

95. Shri Gobind S. Baghasingh (MW-19) who was working as Personnel Officer in Koraput Division of HAL during the

strike period spoke about two incidents dated 1st January, 1981 and 11th March, 1981 in which officers were prevented by the office bearers of the union and their volunteers. According to him, on 1st January, 1981, the officers were prevented from going out for lunch, while on 11th March, 1981 they were prevented from entering the factory premises for duty. Shri Kamlesh Kishormohan Dwivedy, (MW-20) who was working as Security and Vigilance Officer in the Koraput Division of HAL during the strike period stated that during the period of strike the volunteers of Hindustan Aeronautics Employees Association (HAEA) tried to prevent officers from going to the factory for duty and threatened the officers and loyal workmen and that the Union leaders prevented the security and fire brigade personnel from attending to their duties from 1st January, 1981 onwards. Shri T. Natarajan (MW-21), who was working as Security Officer in Helicopter Division of HAL during the strike period stated that during that period, union volunteers were physically stopping and intimidating officers who were coming to the factory for work. He proved the reports made by him to the General Manager in respect of these incidents. He further stated that the union volunteers were frequently indulging in assaulting and intimidating officers during the entire period of strike, and went on to narrate the incident dated 19th January, 1981, in which he was assaulted when he had gone to the HAL Hospital for identifying the dead body of a security Jamadar who fell unconscious in the canteen premises on that day. He even identified the assailants who included some office bearers of HAEA. He described the said incident in the following words :

"I myself was victim of an assault on 19th January, 1981. (Kindly refer Exh. No. HL/M/Ex. 92). One of my Security Jamadar by name Shri Kenchuaiah B. No. 52281-06 fell/unconscious in the canteen premises at about 12 noon. He was immediately rushed in an ambulance to the HAL Hospital where he was declared dead by the Doctor on duty. The Doctor wanted a Security Officer to give a report and identify the dead. Accordingly even at the cost of personal risk I came to the HAL Hospital in a company car at about 1400 hours. After identifying the dead body I was returning to the car when I was accosted by volunteers of the union which included Security Guards Doraiswamy, B. No. 58898-40, Byrappa, B. No. 58367-81, Shankaran Nair, B. No. 58908-11 and other volunteers including office bearers of HAEA like Mr. Ananda Reddy, President and Venugopal Asstt. Secretary. Other volunteers were Mr. Jwalakumar (Design Bureau, E. C. Member), and Jayakanthan, F.C. Member of Medical Department. These volunteers and office bearers man-handled me causing injuries on my head, hand, forehead, although I was in full uniform. They further put fire to the Company car after forcibly taking the key from the Driver Dhanpal and chasing him away. I was treated at the Hospital for the injuries sustained by me. The seats of the car (Reg. No. MEO 9769) Tyre etc. were burnt before some of the people could come and put-out the fire."

96. Shri S. V. Mannaji Rao (MW-22), who during the strike period was working as Assistant Security Officer and Incharge of the Control Room which was set up to monitor the incidents of violence during the period of strike has described some of the incidents in paragraph (5) to (8) of his affidavit of evidence. He claimed that he personally visited the spots where the incidents took place and got the injured officers treated in the hospitals. Shri G. A. Sriranganatha Char (MW-23) who was working in the Technical Training School, HAL at Bangalore spoke about the incidents in which he was assaulted by the Union volunteers while on his way to the Training School on 30th December, 1980. Shri C. S. Jaynathan (MW-24) who was working as Security Inspector in the HAL (Bangalore Complex) and who was assigned to work in the Foundry and Forge Division during the strike period spoke generally about the picketing carried out by the office bearers and member volunteers of HAEA and about how the officers and loyal workers coming to the factory for work were stopped by intimidation, threats assaults and manhandling. He spoke about the incident that took place on 2nd January, 1981, in which the milk can which he had brought from the HAL Hospital was forcibly taken away

by the volunteers of HAEA. Shri H. M. Rajankar (MW-27), who was working as Deputy Design Engineer in the Flight Test Department of HAL (Design Complex) described how he was assaulted by some of the volunteers of HAEA and about how the officers and loyal workers coming to the factory for work were stopped by intimidation, threats, assaults and man-handling. He spoke about the incident that took place on 2nd January, 1981, in which the milk can which he had brought from the HAL Hospital was forcibly taken away by the volunteers of HAEA. Shri H. M. Rajankar (MW-27), who was working as Deputy Design Engineer in the Flight Test Department of HAL (Design Complex) described how he was assaulted by some of the volunteers of HAEA when he was going from his residence in Indiranagar to the factory at about 9.00 a.m. on 30th December, 1980. Shri V. M. Janaki Raman (MW-28) who was working as Administrative Manager, Helicopter Division of HAL (Bangalore Complex) during the strike period, has generally stated about the picketing carried out by the Union volunteers at the gates of the factory and about intimidating on going to, and assaults committed on, officers and loyal workers, who had come for work. He also described as to how he himself was assaulted on 1st January, 1981, when he was on his way to the Helicopter Division where he was working. According to him, not only he himself was man-handled breaking his spectacles in this process but the Moped on which he was riding was also damaged and both its wheels were deilated.

97. It was contended on behalf of the workmen that the lock-out was also illegal for the reasons for which the strike was illegal. This contention cannot be accepted because the lock-out in this case was declared in consequences of illegal strike. The management have placed on record sufficient evidence to substantiate their contentions that even though the strike was formally withdrawn and the workmen reported for duty, the workmen continued their agitational disruptive and violent activities from within and thus in fact continued their illegal strike. It is also in evidence the incidents of indiscipline, go slow, disruption and left the factory on learning that the Union leaders on hunger strike, whose condition had become critical, were arrested and removed to the hospital and indulged in large scale violence throughout the city.

98. The management has examined several witnesses and placed on record several relevant documents to support their contentions in respect of the agitational activities carried on by the workmen from within. Shri K. M. Appaiyah, (MW-5), has also narrated in his affidavit of evidence the incidents of indiscipline, go slow, disruption and violence which took place during the period from 17-3-1981, to 6-5-1981. He also proved the documents annexed by him to his affidavit of evidence in support of his evidence about the incidents. He described the happenings of 6-5-1981, which compelled the management of ITI declare the lock-out in the following words :

"On 6-5-1981, I also received the Telephone message at about 6.00 a.m. that the ITI Buses which were bringing the 'A' Shift employees to the Factory were stopped near the Anjaneya Temple on the Old Madras Road and they were being diverted towards the Victoria Hospital. The Buses did not reach ITI on 6-5-1981, at scheduled time along with the employees. In this connection, I have also telephoned to the Assistant Commissioner of Police at Ulsoor and apprised him of the situation. The subsequent shift i.e. 'FG' Shift in which the buses were to pick-up the employees and bring to the factory did not take place consequent on the diversion of Buses in 'A' Shift itself. At the Main Gate of the Factory some of the union activists entered the factory to force all those employees to leave the worksite who had come for duty. Accordingly the workmen who had come for duty on 6-5-81 went outside the gate numbering about 3,000 tendering the leave slips at the main gate. In this connection, I enclosed a report at page 32 to 34 of the document folder. I have also received complaints from the Executives of the Company namely late Shri T. N. Ravanna, Ex. Sales Manager, Shri

Anantharamaiah, Dy. Chief Supdt., and Shri Vijendra Rao, Works Manager (documents on the file page Nos. 25 to 31) that while coming to duty on 6-5-1981, they were attacked by a group of employees severely and as a result Shri Anantharamaiah was injured with a deep cut and bleeding injury. Late Ravanna was also forced to join the procession and when he joined the procession and proceeded 4 to 5 feet ahead, he was suddenly hit on the back of his head and as a result he fell on the foot-path with bleeding injury. The Medical Report at documents on the file page Nos. 35 to 36 were also obtained for the treatment taken on these two executives consequent on the assault made by the striking workers. In fact late Ravanna was also admitted as an Inpatient to NIMHANS due to severe Head injury he had suffered. In the connection, I also submitted my report to my Superiors as at documents on the file page Nos. 38 to 39 and also I have lodged a complaint to the Police at document on the file page No. 37. The photographs of the injured officers are also produced as annexure 14a and 14b."

99. Shri B. C. Anantharamaiah (MW-7), who was working as Deputy Chief Superintendent, Cross Bar Division, ITI, in May, 1981, proved the report Exh. M-ITI-39, which he made on 8-5-81, in respect of the assault on him committed by the striking workmen on 6-5-1981. Shri B. W. Satyanarayana (MW-8), who was accompanying Shri B. C. Anantharamaiah at the time of the above mentioned incident has described how Shri Anantharamaiah was hit by means of a stick by somebody from the procession of the striking workmen and how he was compelled to join the procession leaving Shri Anantharamaiah, who had fallen unconscious on the road unattended.

100. Shri Subrayan A. Sethuraman (MW-6), has also described the situation that prevailed in the BEL, Bangalore Factory after the workmen resumed work on 15-3-1981. This is what he has stated in his affidavit of evidence.

"On 14-3-1981, the trade unions called off the strike and returned to Factory from 15-3-1981. On that day, the in-coming factory buses bringing the workers for duty in the morning shifts (II shift and General shift) were diverted to the trade union offices in the colony and from there the workers came to the factory in a slogan shouting procession holding flags and placards. Inside the factory, the Presidents of BEEU and BEWUF addressed the employees stating that the strike was not over and that the fight would continue till achievement of demands. Throughout the day tension prevailed and the Asstt. Commissioner of Police alongwith his Police force had to be stationed inside the factory as a precautionary measure. (Ref. Documents No. 25 of Vol. I).

True to the exhortations made by the leaders in the day following the so called calling off of the strike the factory premises were turned into battle ground for trade union agitations and violence and practically no work was turned out. Production was negligible and most of whatever was produced were due to completion of jobs which were already in the pipe line, by the Executives working directly to meet urgent production commitment and through sub-contract. The workers on the other hand engaged themselves in various agitational and violent activities. Management exercised the maximum restraint and thought that the violence and atrocities would be a passing phase. Management issued an appeal (Document No. 20 of Vol. I) to all employees to forget the past and get down to the task ahead of making up the past shortfall in production by determined and disciplined approach. The appeal did not have the

desired effect and the workers' leaders continued with their disruptive and violent activities. The main incidents that took place after the so called calling off of the strike are narrated below:

On the very day on which the workers returned to the factory, the workers of the IPE/Machine Shop in spite of their having come inside the factory did not enter their Shop but commenced agitations. They congregated outside the shop and shouted slogans. Further, on the same day the entire body of workers rushed into the canteen during the lunch session and ate the food without tendering coupans."

He further stated that from 17-3-1981, the trade union leaders let loose a reign of terror all over the BEL factory and described in his affidavit of evidence the violence indulged in by the workmen during the period from 17-3-1981 to 6-5-1981. He described the events of 4-5-1981 and 6-5-1981 as follows:

"On 4-5-1981, the agitations and disorderliness further escalated. There were mass unauthorised movements of workers, with slogans shoutings, processions, carrying placards, speeches etc. inside the factory, in almost all departments. Mobs went round the departments, pulling out the workers from the workspot to join the processions, etc. There was utter chaos and disorder. At the close of the Shifts, the outgoing buses were forcibly diverted to Vidhana Soudha, including the separate buses by which the executives were travelling, much against their wishes. Executives started complaining against Management's soft attitude. Two lady employees who were teased and harassed were ultimately arranged to be dropped at their residence by the Asstt. Commissioner of Police in his jeep. (Document Nos. 59, 60, 63, 66, 66-A, 67, 69, 72, 74, 80, 81 to 84 and 88 of Vol. 1).

On 5-5-1981, the factory witnesses the crescendo of the scenes of agitations, violence and hooliganism. All these started from the early morning when the 2nd Shift employees arrived. There were widespread slogan shouting all over the factory. Feverish and concerted activities were going on every where to take out a mammoth procession to Vidhana Soudha in the middle of the working hours. A large number of banners, placards, effigies etc. were being made out of company materials. There were mass unauthorised movements. Mobs of activities moved from Department to Department instigating the workers to leave the workspot and join the mass procession. Workers from various Departments left in slogan shouting processions with carrying of placards, banners, effigies, etc. Officers and Security Staff were boozed and jeered at. The effigies included various National leaders including the then Prime Minister Smt. Indira Gandhi. For them, mock funeral processions were being carried out. Company's empty tins and drums were made use of for drum-beating for the "funeral" processions. Hootings and abusive languages were freely and continuously used. All these processions converged near the factory main gates. In the meanwhile, disregarding the prescribed lunch-timings, the mobs forcibly entered the canteen and ate away the food freely. After finishing the food three, the mass of the workers then surged forward towards executive canteen, gate-crashed into it and are away the food kept for executives. The situation had gone completely out of control.

In the meanwhile, Management issued another circular to employees (Document No. 93 in Vol. I) pointing out the mounting violence, indiscipline and cessation of work and forewarning them that unless normalcy returned Management would be forced to take drastic steps. However, this was not heeded. All the workers numbering about 10,000 marched out of the factory to the Vidhana Soudha in a

huge slogan-shouting procession, carrying the banners, placards, effigies. They also carried drums and empty tins as thought they would like to use them for making noises. In reality, they carried the property of the company that have some value without any authority. They marched out through the main gates meant for executives and so they could not be subjected to the usual security check for concealment of any factory items.

Later, on the same day, a group of next in-coming shift employees burst into the executives' canteen and scared away the executives who were taking tea and damaged/broke the furniture and crockeries. Later, they came near the Accounts Department and tried to attack an employee who had remained inside the factory without going along with the mammoth procession. (Ref. Document Nos. 61, 62, 63, 66-A, 66-B, 67, 70, 72, 73, 75, 76, 78, 85 and 90 of Vol. I).

On the same evening (5-5-1981), we issued a letter to the BEEU and BEWUF (Document No. 91 in Vol. I) narrating at length all the disorderly and violent incidents that had taken place after the so called calling off of the strike and informing them that only the trade unions would be responsible for any drastic steps that may be forced on the management.

Simultaneously, I also issued letters (Document No. 92 in Vol. I) to the State Labour Secretary, Labour Commissioner, etc. narrating all the incidents and informing them of the deteriorating labour situation and also pointing out that Management could not remain a silent spectator of the increasing violence and atrocities.

On the same night, the Police arrested the JAF leaders undergoing fast near the Vidhana Soudha, (The arrests included two leaders from BEL). This triggered off massive violence, arson and destruction of public property in the city on the next day morning (6-5-1981) indulged in by the workers of all the Bangalore based public sector undertakings owing allegiance to the JAF. The violence and destruction of property was on a very large scale."

Shri M. C. Ponappa (MW-9), who was working as Chief Security Officer in the BEL Factory at Bangalore at the material time has also described the incidents that took place during the period from 17-3-1981 to 6-5-1981 and proved the reports referred to in his affidavit of evidence. His evidence corroborates the evidence of Shri S. Subrayan.

101. Shri N. G. Pradhan (MW-12), who as mentioned above, was working in the Rail Coach Division of BEML has described the incidents that took place in the said factory during the period from 16-3-81 to 6-5-81 Shri P. G. Domingo (MW-34), who was working as Assistant Manager, Final Finishing Department in the Rail Coach Division of BEML during 1981 spoke generally about the working in the factory after the strike was called off. He also stated that on 4-5-1981, employees of the first shift walked out of the factory after lunch and second shift workers did not attend the factory, and that on 6-5-1981, the workmen picketed and intimidated the officers from entering the factory in the first shift. Shri G. A. Ramachandran (MW-33), who was working as Security Officer in the Rail Coach Division of BEML during 1981, proved the reports Exh. M-BEML-23 to 30 in respect of the incidents that took place during the period after the strike was called off and before lock-out was declared. The evidence of Shri G. Maruthi, (MW-35) is practically the same as of the evidence of Shri P. J. Domingo (MW-34). Shri V. K. Malhotra (MW-36) corroborated Shri P. J. Domingo and Shri G. Maruthi. Shri M. Raghavendra Rao (MW-29) who in his capacity as the Chief Administrative Officer and Staff Officer to the Chairman & Managing Director of BEML was a party to all the decisions taken at the corporate level has generally described the agitational activities of the workmen during the period after the strike was called off and before the lock-out was declared.

102. Shri U. S. Panthula (MW-14), who was working as the Group Executive (Technical Services) at the KGF in

1981, has described how he was assaulted by Shri Suraparanya Rao, and Karuppajah, of Gear Shop and Shri Soundaramanian, of Maintenance Department and several workers while he was sitting in his office situated in the Machine Shop itself. He also described how those persons ransacked his office. He also proved the report made by him in this behalf to the General Manager BEML-KGF on the very day. Shri P. S. Gopinath (MW-15) has also described in his affidavit of evidence the acts of vandalism and violence committed by a group of persons including employees of the Gear Shop of KGF on 8-5-1981. He also proved the report made by him in this behalf on the very day to the General Manager in his own hand-writing. The evidence of Shri H. T. Srinivasa Iyengar (MW-16) who was working as Assistant Supervisor Incharge of Vigilance at the KGF in May, 1981 is also of similar nature. Shri A. R. Rama Rao, (MW-30), who was working as Manager of CTA Assembly Shop at KGF during the strike period and Shri V. K. Gopinath (MW-31), who was also working as Assistant Manager at KGF during 1981, have also described the incident that took place in KGF factory on 8-5-1981, and proved the reports made by them in respect of the incidents witnessed by them. Shri K. S. Nagaraja, (MW-37), who was working as Photograph Assistant during 1981, had taken photographs of the damage caused as a result of violence and arson indulged in by the employees in KGF on 8-5-1981. He produced the original photographs at Exh. M-BEML-37. Shri S. Ragavaiah (MW-32) who was working as Personnel Officer in BEML at KGF who handed the disciplinary proceedings instituted against employees for the acts of vandalism committed by the workmen in KGF on 8-5-1981, has stated that 26 employees were proceeded against departmentally and six were discharged as the management lost confidence in them as they were mainly responsible for instigating and prohibiting the workmen.

103. Shri G. C. Pangarkar (MW-17), has also stated how violent clashes continued between the workmen in the Bangalore Complex of HAL after the strike was called off and how the union workmen who had reported for duty during the strike period were humiliated. He also stated that on 5-5-1981, the workmen, who had come to the factory abandoned their workspots in a concerted manner and went on shouting slogans, pulling out officers from their shops and offices and compelling them to join their procession. He also stated that the officers who resisted were humiliated and some were assaulted and forcibly taken in a procession to the Cubbon Park where the Unions Leaders were on hunger strike. Shri Jamatsingh Pawar (MW-26), who was working as Senior Manager (ACC) and Avon Overhaul of HAL stated in his affidavit of evidence that on 5-5-1981, at about 11.25 hours Shri K. Rajagopal, led a group of persons workmen some of whom had sticks in most riotous and disorderly manner shouting slogans to the Office of the Factory Manager where meeting of Senior Officers was going on and demanded that all the Officers present there should join the procession of workers which was working to Vidhana Soudha and when he resisted Shri Rajagopal threatened him, abused and pushed him around humiliating him in the presence of all the officers and forced him to come out of the office of the Manager. He also proved the report Exh. M-HAI-92 made by him in respect of this incident. Shri A.V.B. Reddy (MW-25) who was working as the Chief Production Engineer, Engine Division of the HAL at Bangalore has stated how he was gheraoed by one Shri Baby Nagarajan and others and was asked to tender apology for attending duty during the strike period. He also stated that Mr. Nagarajan abused by calling him a fool and coward.

104. This evidence leaves no doubt, that the workmen continued agitational activities after the strike was withdrawn and these activities especially the grave situation created in the factory as well as in the city of Bangalore due to the violent turn of events due to arrest of union leaders who were on hunger strike left no alternative to management but to declare a lock-out.

105. According to the workmen the lock-out was not declared as a consequence of the strike, which was already withdrawn, nor of any similar activity and was not necessitated by any reasonable apprehension of danger to person or property, as stated in the lock-out notice, but was prompted by the motive to compel the workmen to settle the dispute on the terms offered by the managements. In the

face of the evidence, discussed above it is difficult to accept this submission. The situation had become so grave and the crescendo of violence had reached such a peak, especially after the arrest of the union leaders on hunger strike, that there was no alternative before the managements but to declare the lock-out. As a matter of fact, the incidents that took place on the 5th and 6th of May, 1981, alone justified the action of the managements. The newspaper reports give some idea about how grave the situation was. The Deccan Herald dated 7-5-1981, carried the following news items under the captions "Sequel to Swoop" and "Army alerted to stand by".

"Sequel to Swoop."

"Touched off by the mid-night swoop on fasting JAF leaders, the dammed-up anger of the public sector industries' workers today burst in widespread and devastating violence in the City.

The violence which spread like wildfire this morning, focused mainly round the Subhashnagar Ground which bore the brunt of the damage.

Arson, stoning and invasion of bus stations, including the newly built one at Subashnagar storming of post offices, and the City Railway Station followed by a few incidents of looting were reported from different parts of the City.

The police had to burst hundreds of rounds of teargas shells and fire one round in the air to disperse the rampaging mob in Subashnagar Grounds.

According to a KSRTC spokesman 16 BT^c buses and one KSRHC bus were completely burnt out. Fifty eight BTS buses including double-deckers were damaged with shards of glass dotting the whole area round Subashnagar being more than sufficient evidence.

Subashnagar Grounds where Chief Minister Gundu Rao was to have opened a newly built BTS Bus Station became the scene of the mob rampage much before the official function of inauguration was to begin, at 9 a.m. The workers' incendiary activities began soon after they had commandeered the factory buses up to the grounds at around 6.30 a.m. The specially-erected shamiana, along with nearly 2,000 chairs inside were gutted."

"Army alerted to stand by."

"The Government today alerted the army to stand by to meet the situation arising out of the arrest of the fasting JAF leaders and the violent aftermath this morning.

Highly placed sources said that oral alert had been conveyed to the army authorities. The written alert could be given at any time depending on the situation."

It is also pertinent to note that there was no lockout in any of the units of the HMT, and in Units outside Bangalore of the other four undertakings except KGF. The lock-out in KGF was also not declared simultaneously with the units of BEML at Bangalore on 6th May, 1981. It was declared on 8th May, 1981, after eruption of violence on that day. No lock-out was declared in units where there was no violence. If the lockout was motivated as alleged then it would have been declared simultaneously in all the units in the country of the five Bangalore based undertakings. In view of this much significance cannot be attached to the fact that all the lock-out notices were identically worded.

106. The lock-out notice mentioned the reasons for the lock-out. It read as follows :—

"The Managements of HAL, ITI, BFML, and BEL regret to announce that they have been forced to declare the lock-out of their factories in BANGALORE effective from shifts commencing on or after the mid-night of the 6th/7th May 1981,

(Wednesday/Thursday). This extreme step has unfortunately become necessary on account of the circumstances explained hereunder :

The workmen of these factories had called off their illegal strike and resumed duty in the middle of March, 1981. However, normalcy in production and discipline were not restored. On the other hand, intimidation and assaults including acts of violence on co-workers and executives resulted in insecure conditions inside the factories. This was followed by a concerted go-slow and disruption of work. Workmen collected outside their work spots and moved in groups inside the factory disrupting discipline and production.

During the last five days, after the commencement of a hunger strike by some leaders of the workmen, these acts of disruption of work and indiscipline escalated, in particular :

- Processions and group movements took place with slogan shoutings and mass meetings held inside the factories where provocative speeches were made.
- Workmen walked out of the factories en-mass in a concerted manner on 4th, 5th & 6th May, which action constitutes an illegal strike.
- They also forced the executives to join their processions and physically manhandled those who resisted such attempts.
- The workmen also forced the Company buses carrying workmen and executives to and fro the factories to various unauthorised places on 1st, 4th, 5th & 6th instants.
- On 4th & 5th of May, some of the agitating workmen threw stones and damaged company property inside the factory.
- On 6th May, the workmen hijacked several buses belonging to these companies and took them around the city for use in acts of violence and intimidation.
- They also resorted to throwing stones at Company buses, vans and cars causing injuries to the employees travelling in them.
- Individual cases of assault on co-workers and executives have resulted in grievous injuries. The condition of some of the injured is serious.

In view of these grave acts of intimidation, violence, and other conditions explained above, the Managements apprehend bodily harm to personnel and damage to Company's property. Since the situation has gone beyond control and the safety of personnel and property is in jeopardy, the Managements of these Industries forced to declare a lock-out with effect from the shifts commencing on or after mid-night of 6th/7th May, 1981.

The lock-out will not be applicable to the following categories :

Employees working in Corporate Offices Executives in the Factories & Employees of Hospitals."

107. There is however great force in the submission that the managements instead of opening a fresh dialogue with the various unions or prevailing upon the Government of India to refer the dispute for adjudication continued the lock-out till they brought down the battle weary workmen on their knees to accept the earlier offer which the unions had rejected in February, 1981. No doubt, before lifting the lock-out the managements were keen on getting an assurance of co-operation and industrial peace from the unions. But that was not the only reason for continuing the lock-out. The managements wanted to settle the dispute on their own terms.

108. This brings me to the vexed question of wages for the period of strike and lock-out. It is contended on behalf of the managements that as the strike was illegal there is no question of it being justified and hence the workmen would not be entitled to get any wages for the strike period. The workmen would not be entitled to get wages for the lock-out period also, because the lock-out was legal as well as justified.

109. In support of the contention that what is illegal cannot be justified, reliance was placed on the decision of the Supreme Court in the case between India General Navigation and Railway Company Ltd. and another and their workmen [1960 (1) L.L.J. 1 13]. In that case the question that fell for consideration of Their Lordships, was about proper punishment to be given for participation in an illegal strike, to chose workmen who not only joined in an illegal but also took part in obstructing the loyal workmen from carrying their work and to those workmen who acted merely as dumb cattle. The punishment of dismissal was challenged on the ground that the strike was justified. Their Lordships held that an illegal strike cannot be justified on merits but made distinction in the matter of punishment between the two categories of workmen. The relevant observations are as follows :

"The tribunal, having held that the strike was illegal, proceeded to discuss the question whether it was justified, and came to the conclusion that it was "perfectly justified". In the first place, it is a little difficult to understand how a strike in respect of a public utility service, which is clearly illegal, could at the same time be characterized as "perfectly justified". These two conclusions cannot in law co-exists. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike, is liable to be dealt with departmentally, of course, subject to the action of the department being questioned before an Industrial tribunal, but it is not permissible to characterize an illegal strike as justifiable. The only question of practical importance which may arise in the case of an illegal strike, would be the kind or quantum of punishment and that of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute, must be deprecated and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike or have taken recourse to violence."

110. In the case between Chandramalai Sstate, Ernakulam and its workmen and another, (1960 II L.L.J.—243) the Supreme Court held that the workmen were not entitled to any wage for the strike period as the strike was not justified. In that case immediately after the conciliation proceedings ended in failure, the workmen, without waiting further and without asking the State Government to make a reference under S. 10 of the Industrial Disputes Act, went on strike for the demands which were neither of serious nor urgent nature requiring immediate attention.

111. In the case between the Management of the Fertiliser Corporation of India Ltd. and the workmen (1970 II L.L.J. 25) the workmen went on strike without fully participating in conciliation proceedings and there were incidents of violence even while the management was negotiating the issue and agreeing to pay the statutory bonus ; under those circumstances the Supreme Court held that Tribunal's view that strike was legal and justified was incorrect and the workmen were not entitled to wages for the period of the strike.

112. However, in the case between the Statesman Limited and Their Workmen [1976 (1) LLJ—Page 484] the Supreme Court took a somewhat different view and applied the theory of apportionment of blame even when the strike was illegal and the consequent lock-out legal. Krishna Iyer J. speaking for the three judges Bench propounded the following philosophy of industrial adjudication :

"If the strike is illegal, wages during the period will ordinarily be negatived unless considerate circumstances constrain a different course. Like-wise, if the lock-out is illegal full wages for the closure period shall have to be "forked out" if one may use that expression. But, in between lies a grey area of twilit law. Strictly speaking, the whole field is left to the judicious discretion of the Tribunal. Where the strike is illegal, we have to view the whole course of developments and not stop with examining the initial legitimacy. If one side or other behaves unreasonably or the over all interests of good industrial relations warrant the Tribunal making such directions regarding strike period wages as will meet with justice, fairplay and pragmatic wisdom, there is no error in doing so. His power is flexible."

113. In the case between Crompton Greaves Ltd. and their workmen [1978 (II) LLJ 80] another Bench of two Judges, one of whom was Krishna Iyer J. ignored the dicta laid down in the case of the Statesman Ltd. (citation supra), and stated the "well settled" legal position as follows :

"It is well-settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during the strike disentitles them to wages for the strike period."

However in the case of Balmer Lawrie & Co. Ltd. v/s. Balmer Lawrie Employees Union (1981 Lab. IC. 88), the learned single judge of the Bombay High Court quoted both the decisions in statesman's case as well as in the case of Crompton Greaves Ltd. and preferred not to interfere with the decision of the Tribunal based upon the observations of the earlier but larger bench.

114. Reference may profitably be made at this stage to the observations of Krishna Iyer J. who spoke for the majority, in the case between Gujarat Steel Tubes Ltd. and Gujarat Steel Tubes Mazdoor Sabha [1980 (I) LLJ 18] in which the legality of discharge for participation in an illegal strike was under challenge. The relevant observations which appear in para 126 of the judgement are as follows :—

"The benign attitude towards strike being what we have outlined, the further question arises whether in the light of the accepted finding that the strike as such was illegal and further, was unjustified, all the strikers should face the penalty of dismissal or whether individual cases with special reference to active participation in the strike, should be considered. A rapid but relevant glance at the decided case may yield dividends. In India General Navigation and Railway Co. Ltd., v. Their Workmen, this Court did observe that if a strike is illegal, it cannot be called 'perfectly justified'. But between 'perfectly justified' and 'unjustified' the neighbourhood is distant. Here illegality of the strike does not per se spell unjustifiability. For, in V Crompton Greaves Ltd. v. Workmen, this Court held that even if a strike be illegal, it cannot be categorised an unjustified, unless the reasons for it are entirely perverse or unreasonable. An aspect which has to be decided on the facts and circumstances of each case. In that decision, this Court awarded wages during the strike period because the Management

failed to prove that the workmen resorted to force and violence."

115. In the case between India Marine Service (Pvt.) Ltd. and their workmen [1963 (I) LLJ 122] the Supreme Court awarded to the workmen half the wages for the period of a lock-out which was originally justified being directed as a result of the workmen going on strike which was found unjustified but which was continued for an unreasonably long period. The lock-out in that case was declared on 13th November 1958, and was continued till 4th January, 1959.

116. In the case between Management of M/s. Pradip Lamp Works, Patna and Pradip Lamp Works Karamcharja Sangh, Patna [1971 (21) FLR-(1970) 38 FJR 20] the Supreme Court invoked the principle of apportionment blame, when it was found that both the parties were blame worthy in as much as the strike was unjustified and the lock-out though justified its continuance or following days was not justified.

117. The strike was necessitated by the rigid and unreasonable stand taken by the managements and the Government of India in respect of the claim of the workmen of the five undertakings for parity in minimum wages with BHEL, which claim as held above, clearly flowed from the relevant clauses of the 1978 settlement which the managements refused, to implement. The conciliation failed because of the posture adopted by the managements and the Government of India. No doubt, there was no justification for the violence during the strike and also after it was called off. But the failure of the process of law and collective bargaining created a situation in which the union leaders were required to undertake an indefinite fast. The management and the Government of India stuck to their stand and did not even think of making a reference to the appropriate Tribunal. A timely reference would have saved the situation. Under these circumstances some amount of violence is inevitable especially when such a large body of workmen was involved in the dispute. The Government of India, who had the decisive voice in the matter appeared to be indifferent to the huge loss of production. The management, and the Government of India appeared to be prepared to continue the lock-out till the workmen settled the dispute, on the terms offered earlier. This is therefore a case in which both parties must share the blame. The workmen therefore would be entitled to get at least part of their wages for the strike and lock-out periods and in the context of the violence resorted to by the workmen it will be reasonable to award only 35 per cent of their regular wages for the said periods.

118. In the result, it is held that in view of the relevant clauses in the 1978 settlements the employees were justified in demanding revision of minimum wage so as to bring it on par with the minimum wage fixed in BHEL under the settlement dated 8th/9th January, 1980. The revision contemplated by those clauses was of the minimum wage (Basic Pay + D.A.) only and not of the entire wage structure. The demand made by the workmen for implementation of the relevant clauses in the 1978 settlements and to bring the minimum wage in the five Bangalore based public sector undertakings on par with the minimum wage fixed in BHEL was not barred either by the settlements dated 9th June, 1981, or by the settlements of 1983. Not only that but the managements would not be entitled to set-off the amounts paid under the settlements dated 9th June, 1981, against the difference, if any, payable to the workmen under the terms of this award. The settlements of September/October 1983, would not be affected by the award in this reference, in the sense that there would not be any increase in the wage structure fixed by the said settlements nor would those settlements bar giving retrospective effect from 1st September 1978, to this award. The award, however, will be restricted to the period from 1st September, 1978 to 31st December, 1982. The minimum wage (Basic Pay + D.A.) in all the Bangalore based public sector undertakings, shall be fixed at Rs. 500 per month as on 1st September, 1978. The break-up of this amount will be Basic Pay of Rs. 335+Irreducible D.A. of Rs. 129.90+Variable D.A. of Rs. 35.10. The variable D.A. of Rs. 35.10 in BHEL, BEML, HAL & HMT shall be at the local consumer price index prevailing on 1st September, 1978 at different units, with quarterly adjustments at the rate of Rs. 1.30 per point of rise or fall in

the local indices. In ITI the break up would be as in BHEL viz, Basic Pay of Rs. 335+Rs. 129.30 Fixed D.A. at All India Consumer Price Index 300+Variable D.A. of Rs. 35.10 at Rs. 1.30 per point, for 27 points (At consumer price index 327) with quarterly adjustments at the rate of Rs 1.30 per point of rise or fall in the All India Consumer Price Index. in ITI, however, the amount paid as CCA at 4 per cent will have to be dispensed with, with effect from 1st September, 1978, till 31st December, 1982 settlements. The workmen of all these industries will also be entitled to get an extra annual increment at the rate of Rs. 8 on and from 1st September, 1978 as in BHEL.

119. It is further held that the strike was justified but it was illegal and that during the strike the workmen resorted to violence which was enough justification for the lock-out. The lock-out however was prolonged by the managements to compel the workmen to accept the terms offered by the managements. Under these circumstances, the blame for the strike and the lock-out and even for the violence will have to be apportioned between the parties and the workmen will be entitled to get a part of their wages for the strike

and the lock-out period. I, therefore, answer accordingly the issues that arise for consideration in this reference and pass an award in the following terms:

The Managements of BEL, BEML, HAL, ITI & HMT are directed to fix the minimum wage as on 1st September, 1978, as mentioned above, and to pay the difference between the amount payable and the amounts actually paid during the period from 1st September, 1978 to 31st December, 1982. The difference shall be calculated by the methodology laid down in paragraph 71 and 118 of this award, and paid within six months from today. The Managements of BEL, BEML, HAL, HMT and ITI are directed to pay to the workmen 35 per cent of their regular wages for the strike period. The Managements of BEL, BEML, HAL and ITI are further directed to pay 35 per cent of their wages to the workmen in their units in which lock-out was declared for the period of the lock-out.

M. S. JAMDAR, Presiding Officer
[No. 51037/2/83-I&E(SS)]
ASHOK SAHU, Dy. Director

